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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1281.

THE CENTRAL TRUST COMPANY OF NEW YORK, APPELLANT,

vs.

THE GRANT LOCOMOTIVE WORKS AND THE AMERICAN LOAN AND TRUST COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 2, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, FEBRUARY 6, 1890.

1 At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of October, being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth—present, the Honorable Howell E. Jackson, circuit judge, and the Honorable George R. Sage, district judge—among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY, a Corporation, Complainant,
vs.
THE GRANT LOCOMOTIVE WORKS and THE American Loan and Trust Company, Defendants.
} In Chancery. # 4216.

Be it remembered that heretofore, to wit, on the 28 day of January, in the year of our Lord one thousand eight hundred and eighty-nine, came the complainant, The Central Trust Co., by its solicitors, and filed in the clerk's office of said court their certain bill of review. Said bill of review is clothed in the words and figures following, to wit:

2 Compared. J. W. F. C. 4216. Filed Jan. 28, '89.

Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY, a Corporation, Complainant,
vs.
THE GRANT LOCOMOTIVE WORKS and THE American Loan and Trust Company, Defendants.
} In Chancery. # 4216.

To the judges of the circuit court in the sixth circuit, southern district of Ohio, western division:

Humbly complaining, showeth unto your honors, the Central Trust Company of New York, a corporation under the laws of the State of New York, and files its bill of review herein, and says—

That on the 20th day of October, 1883, your orator filed a bill of complaint in this court in case # 3578, wherein it was complainant and The Toledo, Delphos and Burlington railroad and The Toledo, Cincinnati and St. Louis Railroad Company and Granville D. Braman were defendants, praying for the foreclosure of a certain first mortgage upon said Toledo, Delphos and Burlington railroad'
3 extending from Dayton, Ohio, to a connection with the Ironton and Huntington railroad, near the city of Ironton, Law-

rence county, Ohio, being 180 miles in length, which said railroad in subsequent proceedings in said cause became known as the Southeastern Division—sometimes called the Dayton and Southeastern Division—of the Toledo, Cincinnati and St. Louis railroad; that said bill prayed for the sale of said railroad and property to satisfy certain bonds and interest secured thereon by said mortgage, and for the appointment of a receiver, as will more fully appear by the said bill of complaint, which is hereby referred to, a copy of which is marked "Exhibit 1" and filed herewith.

2. That on the same day one William J. Craig was by an entry made in said cause appointed receiver of the railroad and property described in said bill of complaint of the Toledo, Delphos and Burlington Railroad Company and in paragraph 1 thereof.

And on said day said Craig took possession of said railroad and proceeded to operate the same under the direction of said court.

A copy of said order so appointing said Craig receiver is hereto attached and reference to the same is hereby made, marked "Exhibit 2."

Your orator further says that similar bills of complaint were filed by it in the following cases in this court, namely, case # 3554, wherein it was complainant and The Toledo, Cincinnati and
4 St. Louis Railroad Company, The Cincinnati Northern Railway Company, and The Spring Grove, Avondale and Cincinnati Railway Co. and Granville D. Braman were defendants, and wherein a bill of complaint was filed August 14, 1883, and in case 3576, wherein your orator was complainant and The Toledo, Delphos and Burlington Railroad Company, The Toledo, Cincinnati and St. Louis Railroad Company, and Granville D. Braman were defendants, and in case # 3577, wherein your orator was complainant and The Toledo, Delphos and Burlington Railroad Company, The Toledo, Cincinnati and St. Louis Railroad Co., and Granville D. Braman were defendants, and in case 3579, wherein your orator was complainant and The Iron Railroad Company, The Toledo, Delphos and Burlington Railroad Co., The Toledo, Cincinnati and St. Louis Railroad Company, and Granville D. Braman were defendants.

That the object of said bill of complaint in said case 3554 was to foreclose a mortgage in favor of your orator upon a certain railroad known as the Cincinnati Northern railway, extending from Cincinnati, Hamilton Co., Ohio, to Dodds, in Warren county, Ohio, a distance of about 42 miles; and the object of said bill of complaint in said case 3576 was to foreclose a mortgage in favor of your orator upon the Toledo, Delphos and Burlington railroad, extending from Dodds, the northern terminus of said Cincinnati Northern railway, to a point 7 miles south of the city of Dayton, Ohio, which railroad in the proceedings in said case was commonly known as the Cincinnati Division of the Toledo, Cincinnati and St. Louis
5 railroad; and the object of the bill of complaint in said case 3577 was to foreclose a mortgage in favor of your orator upon the Toledo, Delphos and Burlington railroad, extending from the city of Dayton to the city of Delphos, both in the State of Ohio; and the object of the bill of complaint in said case 3579 was to fore-

close a mortgage in favor of your orator upon the railroad of the Iron railroad, extending from Ironton to Wellston, in the State of Ohio.

Your orator further shows that by a separate entry, made separately in each of the aforesaid cases, one William J. Craig was appointed receiver respectively of each of said railroads on said 20th day of October, 1883, but with direction to operate said railroads as a connected line keeping separate accounts.

Your orator further says that thereafter, on the — day of October, 1883, similar bills for foreclosure of mortgages, made respectively by other constituent companies on their respective roads, which roads, when connected, would form a line of railroad extending from Delphos to Toledo, Ohio, from said Delphos through Indiana and Illinois to East St. Louis, Ill., were filed in the proper circuit courts of the United States for the northern district of Ohio, the district of Indiana, and the southern district of Illinois by your orator, the mortgagee in each of said mortgages, each bill of complaint praying for the foreclosure and sale separately of each of said roads.

6 Your orator further says that said Toledo, Cincinnati and St. Louis Railroad Company was a corporation formed by the consolidation, under the respective laws of Illinois, Indiana, and Ohio, of the above-named constituent companies and other companies, extending from St. Louis to Delphos, Ohio, thence to Toledo, and from Delphos to Cincinnati and Ironton; that each mortgage was a separate and distinct mortgage upon separate property, there being no property in one mortgage included in another; that all of said mortgages were made prior to any consolidation and were entirely unaffected thereby.

Your orator further says that on October 27, 1883, — American Loan and Trust Company and the Grant Locomotive Works filed their intervening petition in said case # 3578, setting forth that on the 1st day of August, 1882, said Grant Locomotive Works had made a contract with said Toledo, Cincinnati and St. Louis Railroad Co. for leasing to it 10 locomotives and tenders, Nos. 57 to 66 consecutively, both inclusive, and that said Grant Locomotive Works had delivered the same to said Toledo, Cincinnati and St. Louis Railroad Co., in pursuance of said agreement, and that the rent of the same to be paid by the said Toledo, Cincinnati and St. Louis Railroad Co. was as follows:

August 1st, 1883, $20,000.
August, 1884, $27,000.
August 1, 1885, $27,000.
August 1st, 1886, $31,000.

7 Also a sum equal to the half-yearly interest on the said total amount of rental at the rate of six per cent. per annum, to be paid the first days of February and August in each year, together with taxes, insurance premiums on said locomotives and tenders.

Said petition further avers that the said Toledo, Cincinnati and St. Louis Railroad Company failed to pay said rent falling due Au-

gust 1st, 1883, to wit, $20,000, and that the interest thereon amounted to $3,150, and that this court had, by one E. E. Dwight, receiver, taken possession, on the first day of August, 1883, of said locomotives and tenders, and that thereafter one William J. Craig had been appointed receiver in place of said Dwight.

And said petition further averred that by reason of said default the Grant Locomotive Works was entitled to take possession of said locomotives and tenders, and that the sum of $105,000, trust equipment bonds, provided for in said agreement had become due, whereof said locomotive works owned $53,000, and said American Loan and Trust Company, as trustee in said agreement, appeared for the balance.

And said petition alleged that there was due from said receiver $30,804.66 on account of rent for said locomotives and tenders, and the further sum of $20,000 for alleged depreciation in value of the rolling stock in the use thereof, making a total of $50,804.66.

And said petition prayed that said receiver might be ordered to pay said amount and to surrender forthwith to petitioners the locomotives and tenders aforesaid, and to pay to petitioners such
8 part of the sum of $105,000 as might remain due after the sale of the locomotives and tenders, and the application of the proceeds thereof towards the payment of the sum of $105,000, and that said balance when determined, as well as the said sum of $50,804.66, might be adjudged a charge upon all the property of the Toledo, Cincinnati and St. Louis Railroad Company and its constituent companies ahead of the first mortgages thereon. A copy of said petition is hereto attached, marked "Exhibit No. 3," and made part hereof, and reference is made thereto.

Your orator further says that on the 22d day of December, 1883, although no process had been issued or asked for in said intervening petition requiring your orator to answer, and without the knowledge of your orator, Bluford Wilson, Esq., counsel for the said Grant Locomotive Works and American Loan and Trust Company, procured 2 certain orders or decrees to be entered in case 3578 in this court, purporting to be entered upon the said intervening petition of said Grant Locomotive Works and the American Loan and Trust Company, filed therein October 27, 1883, which orders, marked "A" and "B," respectively, are in the words and figures as follows:

"A."

THE UNITED STATES OF AMERICA, } *ss:*
Southern District of Ohio, Western Division, }

9 At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in said district, on the first Tuesday in October, being also the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of

the United States of America the one hundred and eighth—present, the Hon. George R. Sage, district judge—on Saturday, the 22nd day of December, 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK
vs.
THE TOLEDO, CINCINNATI AND ST. LOUIS Railway Company (Dayton and Southeastern Division) *et al.*
#3578. In Chancery.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Company.

The said cause came on to be heard upon the petition and the answer of the receiver thereto and upon the evidence submitted on behalf of said petitioners.

And it appearing to the satisfaction of the court that the receiver has in his possession the Grant locomotives numbered 57 to 62, inclusive, and 64 to 66, inclusive, with their tenders, and is
10 using the same in the operation of the said Southeastern Division of the defendant company's railroad between Dayton and ——, Ohio, and that the said locomotives are nine of the ten covered by the agreement of lease set out in said petition and were acquired by said defendant, The Toledo, Cincinnati and St. Louis Railroad Co., under the terms of said agreement, and were so held at the date of the appointment of the receiver herein;

And it further appearing that the present receiver or his predecessor took the said locomotives into his possession as such receiver on the first day of August last and has had the same in continuous use and possession since that date without having made any payment on account of the rental as provided in said indenture of lease or other compensation for the use thereof;

And it further appearing that the said locomotives are, in the judgment of the receiver, necessary to the proper operation of the said division of said railway and should be acquired as part of its permanent equipment, and that the value of said locomotives and tenders as fixed in said agreement of lease is reasonable, and that the petitioners are willing, upon receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court and upon due deliberation thereon, it is ordered, adjudged, and decreed that the receiver pay to the said petitioners as rental for said locomotives and tenders and in full for all claims for rental, interest, and re-
11 pairs down to the first day of December, 1883, the sum of $21,252.70, the same being the amount due to said date under the terms of said lease, and the further sum of $78,030, balance in full as purchase-money, for said locomotives and tenders.

And it is further ordered that the receiver pay said several amounts as part of the operating expenses of the said Southeastern Division

out of any money not appropriated for the payment of current labor, supplies, or taxes.

And it is further ordered and decreed that the said several amounts, with interest thereon at the rate of six per cent. from the first day of December, 1883, shall be a charge upon the income, earnings, and all the property of the said Toledo, Cincinnati and St. Louis railroad, and especially of said Southeastern Division, prior to the first-mortgage or other bonded debt of said railroad or said division thereof, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railroad or said division shall be a first lien thereon, and the said sale shall be made subject thereto.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do
12 hereby certify that the foregoing decree is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 5th day of December, A. D. 1888.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

"B."

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, in said district, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the 108th—present, the Hon. George R. Sage, district judge—on Saturday, the 22d day of December, 1883, among the proceedings had were the following, to wit:

13 THE CENTRAL TRUST COMPANY OF NEW YORK, Complainant,
vs.
THE CINCINNATI NORTHERN RAILWAY CO. *et al.* } In Chancery. # 3578.

In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Company.

The said cause came on to be heard upon the petition and the an

swer of the receiver thereto and upon the evidence submitted on behalf of said petitioners.

And it appearing to the satisfaction of the court that the receiver has in his possession Grant locomotive # 63, and is using the same in the operation of the said Cincinnati Northern Railway Company between Cincinnati and Dayton, Ohio, and that the said locomotive is one of the ten covered by the agreement of lease set out in said petition, and was acquired by The Toledo, Cincinnati and St. Louis Railroad Company, one of the defendants, under the terms of said agreement, so held at the date of the appointment of the receiver and was herein;

And it further appearing that the present receiver or his predecessor took the said locomotive, with its tender, into his possession as such receiver on the first day of August last, and has had the same in continuous use and possession since that date without having made any payment on account of rental as provided in
14 said indenture of lease or other compensation for the use thereof.

And it further appearing that the said locomotive is, in the judgment of the receiver, necessary to the proper operation of said railway and should be acquired as part of its permanent equipment, and that the value of said locomotive and tender as fixed in said agreement of lease is reasonable, and that the petitioners are willing, upon receipt of the contract price or upon being adequately secured therein, to transfer the title of the same to the receiver;

And the matter being fully heard by the court, and upon due deliberation thereon, it is hereby ordered, adjudged, and decreed that the receiver pay to the said petitioners as rental for said locomotive and tender, and in full for all claims for rental, interest, and repairs down to the 1st day of December, 1883, the sum of $2,361.30, the same being the amount due to said date under the terms of said lease.

And the further sum of $8,670.00, balance in full as purchase-money for said locomotive and tender.

And it is further ordered that the receiver pay said several amounts as part of the operating expenses of the said railway out of any money not appropriated for the payment of current labor, supplies, and taxes.

15 And it is further ordered and decreed that the said several amounts, with interest thereon at the rate of six per cent. per annum from the first day of December, 1883, shall be a charge upon the earnings, income, and all the property of the said Cincinnati Northern Railway Company as ahead of the first-mortgage or other bonded debt of said company, and any balance of said several amounts remaining unpaid at the date of the foreclosure and sale of the said railway shall be a first lien thereon, and the said sale shall be made subject thereto.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } ss:

I, Benjamin R. Cowen, clerk of the circuit court of United States

within & for the division and district aforesaid, do hereby certify that the foregoing decree is truly taken and correctly copied from the journal of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 5th day of December, 1888.

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*.

Your orator further says it had no notice or knowledge that said orders were in contemplation and no knowledge or notice of the entering of said orders or of any motion therefor until the
16 26th day of Feb., 1884, when it first learned of the fact that said orders had been entered by the announcement thereof by counsel for the said Grant Locomotive Works and the American Loan and Trust Co. to the judges of the circuit court of the United States for the sixth and seventh circuits while sitting in Indianapolis in conference relative to the claims for rolling stock alleged to be in the possession of the receiver operating the several constituent roads of the said Toledo, Cincinnati and St. Louis Railroad Co.

And your orator says that it thereupon took immediate steps to procure the rescission of said orders, and that thereafter, on March 5th, 1884, this court caused orders to be made in said case, # 3578, suspending said orders "A" and "B" until the matter thereof should be further inquired into and adjudicated; and thereafter, on the 15th day of said March, by order and leave of this court, your orator filed in said case 3578 certain proceedings entitled "petition for rehearing," &c., wherein were set forth the facts relative to the procurement of said orders "A" and "B," and the errors and irregularities of the same.

Your orator did further pray that the said proceeding entitled "petition for rehearing," &c., be taken either as a petition for rehearing or as a bill of review, according as the rules in courts of equity might require. A copy of said petition is filed herewith, marked "Exhibit No. 4," and is referred to as part hereof.

17 Your orator further says that the several matters contained in said last-named proceeding were fully heard by Hon. John Baxter, circuit judge of the sixth circuit of the United States, and that the said Grant Locomotive Works and the American Loan and Trust Company appeared at said hearing in opposition to said petition for rehearing, and after argument and proof and upon due consideration thereof the said circuit judge made and entered in said cause 3578, on April 10, 1884, a certain order or decree, whereby the court did wholly rescind, set aside, and hold for naught the said orders "A" and "B," and did further in said order of April 10, 1884, adjudicate and settle the rights of said Grant Locomotive Works and the American Loan and Trust Co. in reference to locomotives Nos. 57 to 66, inclusive, as well as the rights of sundry other owners of leased rolling stock who had filed similar intervening petitions in said case, the court decreeing that all said owners, including the Grant Locomotive Works and the American Loan and Trust Com-

pany, were entitled to the immediate return, if they so desired, of their rolling stock, including said locomotives, and also reasonable compensation from the receiver for the use of said stock by him, and also remuneration for deterioration of said rolling stock, if any, beyond ordinary wear and tear; and the court did in said order direct said receiver to surrender any of said rolling stock to the owners thereof upon demand, and did also in said order refer said matters of compensation to a special master commissioner to
18 take evidence thereon and report upon the same, all of which was done. A copy of said order of April 10, 1884, is filed herewith and marked "Exhibit No. 5," and the same is referred to as part hereof.

Your orator further says that the said Grant Locomotive Works and the American Loan and Trust Company and one R. S. Grant, who, in the meantime, had filed in cause 3578, on June —, 1884, an intervening petition praying compensation for locomotives numbers 67, 68, and 72, took part in all proceedings before said master by claiming and proving the compensation aforesaid for said locomotives.

And your orator further says that when said railroad was sold on foreclosure in said case 3578, on the — day of June, 1884, it was not sold subject to any claim or lien for said locomotives, and none of said locomotives were included in said sale, but were treated as the property of said Grant Locomotive Works and R. S. Grant; and thereupon the said Grant Locomotive Works and the American Loan and Trust Company and the said R. S. Grant retook said locomotives 57 to 66, inclusive, and 67, 68, and 72 and 73, of R. S. Grant series, according to their respective ownerships of the same, and all the right, title, and interest of the same, and subsequently removed the same, and they still have them, whereby your orator understood and charges the fact to be that they severally and according to their respective interests therein abandoned all claim under said orders "A" and "B" of Dec. 22, 1883, and neither your orator nor
19 the purchasers of said railroad at said foreclosure knew aught to the contrary until on the — day of February, 1887, when said Grant Locomotive Works and said R. S. Grant—said circuit judge having in the meantime departed this life, and his successor having been appointed and qualified—filed petitions in said cause 3578 to set aside said orders of Aprii 10, 1884, and to restore said orders "A" and "B" of Dec. 22, 1883, which petitions this court granted on June 11, 1887, by order then entered in said cause, whereby this court did set aside said orders of April 10, 1884, and did adjudge the same to be null and void, and did restore said orders "A" and "B" of Dec. 22, 1883.

And thereafter, on the 3rd day of November, 1888, said Grant Locomotive Works filed its motion in said cause 3578 asking the court to order the purchasers of said railroad sold in said case 3578 to pay into court the several amounts mentioned in said orders "A" and "B;" and thereupon your orator prayed said court to treat said proceedings of March 15, 1884, entitled "petition for rehearing," &c. (Exhibit 4 to this bill), as a bill of review to correct said orders "A"

and "B" of Dec. 22, 1883, and then to permit your orator to amend said proceedings of March 15, 1884, by adding thereto the averments contained in this bill of review and to docket the same as thus amended as an original bill of review as of date March 15, 1884. The court refused to allow the same to be done and
20 ordered said railroad to be sold unless the respective amounts named in said orders "A" and "B" of Dec. 22, 1883, should be paid within 60 days by the purchasers of said railroad sold at said foreclosure sale in said case 3578.

A copy of said order is herewith filed as Exhibit "F" and referred to as part hereof.

Your orator says it was impossible for it to file bill of review to correct said decrees at any time between March 15, 1884, and June 11, 1887, because said decrees, by said order of April 10, 1884, had been set aside and annulled, and your orator was compelled to so regard them and did so regard them during said period, and was during said period thereby debarred from taking any steps to correct said orders "A" and "B."

And moreover your orator says that during said period from March 15, 1884, to June 11, 1887, it believed and had the right to believe that said Grant Locomotive Works and American Loan and Trust Company and R. S. Grant had abandoned all claim of right under said orders "A" and "B" of Dec. 22, 1883; and so your orator says that said period of time between March 15, 1884, and June 11, 1887, should not be counted against it in filing its bill of review.

And your orator says that both said orders "A" and "B" of Dec. 22, 1883, are erroneous and ought to be reviewed, reversed, and set aside for the many errors and imperfections common thereto, as shown by the record of the said case 3578—that is to say:

21 1. Because both said orders were entered without any hearing, without any process issued to your orator, without any knowledge of or notice to your orator, and without any evidence being adduced in court in support thereof.

2. Because said orders find that the "present receiver" or his predecessor took the locomotives mentioned in said orders into his possession on the 1st day of August, 1883, and that he had had the same in continuous use and possession since that date, and had made no payment on account of the rental thereof, as was provided in said indenture of lease, or other compensation for the use thereof, whereas the record of this case shows that William J. Craig was not appointed receiver in case # 3578 until October 20, 1883, and that he had no predecessor whatever.

3. Because said orders found that the value of said locomotives and tenders in the judgment of the receiver, as fixed in the said agreement, was reasonable, whereas, first, no evidence was adduced to show that said price was reasonable, or that said Craig, receiver, considered it reasonable, or that he was a judge of such values, and, in fact, said price was more than twice the value of said locomotives at said time; and, secondly, because said orders found that the reasonableness of said price existed in the judgment of the receiver

only, which judgment of the receiver, in the absence of evidence thereon, would not authorize the entering of said decree.

4. Because said orders were entered by the court under a misapprehension of fact and by inadvertence in this, that the court
22 which ordered the entering thereof made no examination thereof, but was informed by the counsel of intervening petitioners, Bluford Wilson, Esq.,' that the entering of said orders had been assented to by your orator, and, acting in that belief, the court entered said orders, which it would not otherwise have done except after full hearing, whereas your orator says it never assented to the entering of said orders and had no knowledge thereof, as hereinbefore stated.

5. Because said orders are a departure from the established practice of the court and are void and erroneous.

6. Because said orders were and are erroneous, if not void, in that they were not the deliberate judgment of the court upon the facts of the record, and in that the matter presented by the petition was not at issue or ready for hearing when said orders were entered.

7. Because it was erroneous, as shown by the record, to order that the receiver should pay any rental or repairs for the locomotives and tenders, including said orders from the 1st day of August, 1882, to the 1st day of Dec., 1883, namely, by order "A" the sum of $21,252.70, and "B" the sum of $2,361.30.

8. Because in the entering of said orders the proper forms of the administration of justice were disregarded, the functions of the court were abnegated, and there was no hearing or decision by the court, and counsel for the said Grant Locomotive Works and the American Loan and Trust Company was allowed to prepare and
23 enter such decrees as he thought fit, the court being under the erroneous belief that the said orders were assented to by your orator.

9. Because said orders purported to make said contract price of said locomotives and tenders and the said entire rentals and repairs thereof a lien and charge upon the Cincinnati Northern railway and the Toledo, Delphos and Burlington railroad prior to the mortgages thereon, foreclosed in case 3578 and in case 3554 respectively, instead of charging the same upon the said entire consolidated railroad to the extent of the whole number of said locomotives and tenders included in said orders.

10. Because said orders are fraudulent and void.

11. Because of other imperfections and errors appearing in said orders and in the record of said case # 3578.

Your orator further says that said order "A" of December 22, 1883, ought to be reviewed, reversed, and set aside for its special errors and imperfections—that is to say:

1. Because said order "A" is fraudulent, in this, that it finds that the said locomotives 57, 58, 59, 60, 61, 62, 64, and 65 and 66 were in the possession of the receiver, and that the said receiver was using the same in the operation of the Dayton and Southeastern railway, known also as the Southeastern Division, at the date of said
24 order, whereas, in fact, said locomotives were not in use upon

said Southeastern Division at said date, and if they were upon the tracks thereof they were only so casually and temporarily and not for use as part of the equipment of said Southeastern Division, but were at that time in use by said Receiver Craig on the line formed by the roads extending from Ironton, Ohio, to St. Louis, all of which said Grant Locomotive Works and said American Loan and Trust Company and their counsel well knew.

2. Because said order is not warranted by the allegations and relief prayed for in the petition of said Grant Locomotive Works and American Loan and Trust Co. filed in said case # 3578.

3. Because the statements in said order that the court was satisfied that the receiver in said case # 3578 had in his possession the locomotives in question are not only untrue in fact but were without evidence to sustain the same.

4. Because said order is uncertain and ambiguous, in this, that it charges the amounts therein named as a first lien upon the Toledo, Cincinnati and St. Louis railroad prior to the mortgage thereon, but orders that the receiver pay the same as part of the operating expenses of the Dayton and Southeastern railway, commonly known as the Southeastern Division, out of moneys not appropriated for the payment of current labor, supplies, and taxes.

25 And your orator says that said order "B" of Dec. 22, 1883, ought to be reviewed, reversed, and set aside for its special errors and imperfections—that is to say:

1. Because said order "B," while it purports to find that locomotive No. 63 was in the use and possession of the receiver appointed and acting in said case # 3578, finds also that it was in use on the Cincinnati Northern railway, and purports to make the contract price thereof, to wit, the said amounts found due by said order, the sum of $2,361.30 as rental and interest and repairs, and $8,670 balance in full of purchase money, a lien upon said Cincinnati Northern railway, a distinct and separate property and interest in no way involved in or affected by the proceedings in said case # 3578.

2. Because said order is fraudulent, in this, that it finds that said locomotive 63 was in the possession of the receiver, namely, the receiver appointed and acting in case 3578, at the date of said order, and that said receiver was using the same in the operation of the Cincinnati Northern railway between Cincinnati and Dayton, Ohio, whereas, in fact, said locomotive was not in use upon said Cincinnati Northern railway at said date, and if it was upon the tracks thereof it was so only casually and temporarily and not for use as part of the equipment of said Cincinnati Northern railway; all of which said Grant Locomotive Works and the American Loan and Trust Co. and their counsel well knew.

26 3. Because said order was and is erroneous, as shown by the record, in that it ordered that the receiver, meaning the receiver appointed and acting in case # 3578, should pay rental and repairs for said locomotives and tender from the first day of August, 1882, to the 1st day of Dec., 1883, namely, the sum of $2,361.30.

4. Because said order is erroneous and void in that it charges the several amounts therein found due, with interest, upon the earnings,

incomes, and all the property of the Cincinnati Northern Railway Co. ahead of the first mortgage or other bonded debt of said Cincinnati Northern Railway Company, which said Cincinnati Northern Railway Co. was not and never has been a party to said case # 3578 wherein said order was entered, and neither its railway or any other of its property is involved in or in anywise affected by any of the proceedings in said case 3578.

Your orator files herewith a copy of the record in said cases 3554 and 3578 and craves leave to refer to same as part hereof.

In tender consideration whereof, and for that there are divers errors and imperfections in said orders and proceedings, by reason whereof the same ought to be reviewed, reversed, and set aside, your orator prays that said American Loan and Trust Co. and said Grant Locomotive Works may be required to answer the premises, and that your orator may be relieved in all and singular the premises according to the course of equity and good conscience.

EDWARD COLSTON,
Solicitor for Complainant.

27 EDWARD COLSTON,
Counsel for Complainant.

STATE OF OHIO, *Hamilton County,* } ss:

Edward Colston, being by me first duly sworn, says he is attorney of The Central Trust Co., complainant, and that the facts stated in the foregoing bill of review are true, as he believes.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 10th day of January, A. D. 1889.

JOHN FLACK WINSLOW,
[SEAL.] *Notary Public, Ham. Co., O.*

[Endorsed:] # 4216. Filed Jan. 28, 1889.

28 And afterwards, to wit, on the 28th day of January, A. D. 1889, there was issued out of the clerk's office of said court our certain subpœna directed to the marshal of said district and against the defendants herein. Said subpœna is clothed in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *Southern District of Ohio,* } ss:

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are hereby commanded to summons the American Loan & Trust Co. and the Grant Locomotive Works, corporations, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in April next, to answer a certain bill

of review filed and exhibited in said court against them by the Central Trust Company, a corporation and citizen of and resident of the State of New York.

Hereof you are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of
29 the United States, this 28th day of January, A. D. 1889, and in the 113th year of the Independence of the United States of America.

Attest: [SEAL.] B. R. COWEN, *Clerk.*

MEMORANDUM.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of March, 1889; otherwise the said bill may be taken *pro confesso.*

B. R. COWEN, *Clerk.*

And afterwards, to wit, on the 29th day of January, A. D. 1889, came the marshal to whom the aforesaid subpœna was in form directed, and filed in the clerk's office of said court the same, with his proceedings endorsed thereon, in the words and figures following, to wit:

Marshal's Return.

Received this writ at Cincinnati, Ohio, on the 28th day of January, 1889, and at said Cincinnati, Ohio, on the same day I served the within-named American Loan and Trust Co. and the Grant Locomotive Works, corporations, by handing a true copy of this writ, having all the endorsements thereon, personally to Bluford Wilson, Esq., solicitor of record in cases # 3554 and 3578 of
30 this court, for the said defendants, American Loan & Trust Co. and The Grant Locomotive Works, corporations.

H. C. URNER, *U. S. Marshal,*
By RICHARD C. ROHNER, *Deputy.*

Service	$2 00
Copy	50
1 mile	06
	$2 56

And afterwards, to wit, on the 29th day of January, A. D. 1889, an entry was made upon the journal of said court clothed in the words and figures following, to wit:

This day this cause came on to be heard on the motion of Bluford Wilson, Esq., solicitor for the said American Loan & Trust Co. & the Grant Loco. Works, to strike the bill of review from the files, and was argued by counsel, and the court being advised in the premises, it is ordered, adjudged, and decreed that said bill of review be, and the same hereby is, stricken from the files of this court;

and thereupon come the complainant and prayed an appeal to the Supreme Court of the United States, which is allowed upon the complainant executing a bond, with sufficient security, in the sum of $250.

31 And afterwards, to wit, on the 31st day of January, A. D. 1889, the following appeal bond was filed in the clerk's office of said court, clothed in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Ohio, Western Division, *ss:*

THE CENTRAL TRUST COMPANY OF NEW YORK
vs.
THE GRANT LOCOMOTIVE WORKS & THE AMERICAN LOAN AND TRUST COMPANY.

Know all men by these presents that we, the Central Trust Company of New York, as principal, and Leo A. Brigel and Richard Folsom, as sureties, are held and firmly bound unto the Grant Locomotive Works *et al.* and the American Loan and Trust Company in the sum of two hundred and fifty dollars to be paid to the said The Grant Locomotive Works *et al.*, their assigns or suc-
32 cessors; to which payment, well and truly to be made, we bind ourselves and each of us jointly by these presents.

Sealed with our seals. Dated this 31st day of January, 1889.

Whereas the above-named The Central Trust Company of New York has taken out an appeal to the Supreme Court of the United States of America to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named The Central Trust Company of New York shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

LEO A. BRIGEL. [SEAL.]
RICHARD FOLSOM. [SEAL.]

Sealed and delivered in presence of—
GEORGE C. WRIGHT.
ROB'T C. GEORGI.

The above security is approved.

HOWELL E. JACKSON,
Circuit Judge of the United States, S. D. O.

33 SOUTHERN DISTRICT OF OHIO, *ss:*

I, Leo A. Brigel, one of the sureties above named, do solemnly

swear that after paying my just debts and liabilities I am worth thirty thousand dollars in real estate in my own name situate in the county of Hamilton, in said district.

LEO A. BRIGEL.

Sworn to before me the 31st day of January, 1889.

[SEAL.] ROB'T C. GEORGI,
Deputy Clerk of the U. S. Circuit Court, S. D. O.

SOUTHERN DISTRICT OF OHIO, *ss:*

I, Richard Folsom, one of the sureties above named, do solemnly swear that after paying my just debts and liabilities I am worth ten thousand dollars in real estate in my own name situate in the county of Hamilton, in said district.

RICHARD FOLSOM.

Sworn to before me the 31st day of January, 1889.

ROB'T C. GEORGI,
[SEAL.] *Deputy Clerk of the U. S. Circuit Court, S. D. O.*

34 THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said court in the above-entitled cause.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 12th day of March, A. D. 1889.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

35 [Endorsed:] No. 2216. United States circuit court, southern district of Ohio, western division. The Central Trust Co. of New York *vs.* The Grant Loco. W'ks and The American Loan and Trust Co. Transcript. —— ——, plaintiff's attorney.

36 Circuit Court of the United States for the Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, as Trustee, under a Certain Indenture of Trust and Mortgage Made by the Toledo, Delphos and Burlington Railroad Company, Dated May 16, 1881, Complainant,

vs.

THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD Company, The Toledo, Cincinnati and St. Louis Railroad Company, Grenville D. Braman, Defendants.

} In Equity.

To the judges of the circuit court of the United States for the southern district of Ohio:

The Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York and a citizen of that State, brings this its bill of complaint against the Toledo, Delphos and Burlington Railroad Company, a corporation organized under the laws of the States of Ohio and Indiana and a citizen of Ohio; the Toledo, Cincinnati and St. Louis Railroad Company, a corporation created by and existing under the laws of the States of Ohio, Indiana, & Illinois and a citizen of Ohio, and Grenville D. Braman, a citizen of Massachusetts; and thereupon your orator complains and says:

37 I. That heretofore and prior to the 16th day of May, 1881, the Dayton and Southeastern Railroad Company, a corporation created by and existing under the laws of the State of Ohio, and the Toledo, Delphos and Burlington Railway Company, a corporation created by and existing under the laws of the States of Ohio and Indiana, duly and lawfully became and were consolidated in one corporation under the name of the Toledo, Delphos and Burlington Railroad Company, and said consolidated corporation was created by and thereafter continued to exist under the laws of the said States of Ohio and Indiana; that on the 16th day of May, 1881, the said last-mentioned corporation was the owner of or about to construct and equip the lines of railroad and appurtenances hereinafter described from a point in the city of Dayton, Ohio, through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence in a branch line through the counties of Jackson, Gallia, and Lawrence to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, and by its president and secretary, under its corporate seal and in pursuance of a resolution to that end duly adopted on the 12th day of April, 1881, by the board of directors of said last-mentioned corporation, which resolution was thereafter and prior to the execution of the bonds and indenture of mortgage hereinafter mentioned duly ratified by the vote and consent of the holders of a majority of the stock of said corporation at a meeting of stockholders convened and

held according to law, did execute its two thousand two hundred
38 and fifty bonds for the sum of one thousand dollars each, dated the 16th day of May, 1881, payable in gold coin of the United States on the 1st day of April, 1921, said bonds bearing interest at the rate of six per cent. per annum, payable semi-annually on the first days of April and October in each year in gold coin at the city of New York or London, England, each of said bonds having interest warrants or coupons for thirty dollars each thereto attached for payment — interest as aforesaid; and said Toledo, Delphos and Burlington Railroad Company issued and sold or caused to be sold two thousand two hundred and fifty of said bonds with said interest warrants or coupons attached, all of which said bonds were, before the same were issued, duly certified by your orator, and said bonds are now in the hands of divers and sundry persons as holders thereof, and with the proceeds of sale of said bonds said railroad company did locate, construct, and equip its said line of railroad and complete and improve the same.

II. Your orator further shows that, in order to secure the payment of the principal and interest of said bonds as the same should mature, the said Toledo, Delphos and Burlington Railroad Company, formed by consolidation as aforesaid, did, on or about the said 16th day of May, 1881, in pursuance of the further provision of said resolution, execute and deliver to your orator, a corporation created by and existing under the laws of the State of New York and a citizen of said last-mentioned State, a certain deed or indenture o
trust and mortgage, which said deed or indenture of trus
39 and mortgage was duly recorded in the several counties in and through which said railway was situated and extended, to wit, in the county of Montgomery, on May 26th, 1881; in the county of Greene, on May 29th, 1881; in the counties of Fayette and Ross, on May 28th, 1881; in the counties of Vinton and Jackson, on May 30th, 1881; in the county of Gallia, on May 31st, 1881, and in the county of Lawrence, on June 1, 1881; and thereby it did grant, bargain, sell, convey, and confirm unto your orator and its successor or successors in trust all and singular its line of railroad as the same was or should thereafter be constructed between the crossing at Third street, in Dayton, Ohio, being the western terminus of said division, and thence with the line of said road through the counties of Montgomery, Greene, Fayette, Ross, Vinton, and Jackson, and thence on its branch line, through the counties of Jackson, Gallia, and Lawrence, to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, being about one hundred and eighty miles in length, together with all and singular the right of way, road-bed made or to be made, its track laid or to be laid between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-houses, engines, cars, machine shops, building, erections in any way then appertaining or which should thereafter appertain unto said described line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or which should be at any

time thereafter held, owned, or acquired by the said Toledo,
40 Delphos and Burlington Railroad Company for use in connection with its line of railroad aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights then or which should be thereafter owned by said last-mentioned railroad company in connection with its line of railroad aforesaid between said points, together with all and singular the powers and franchises thereto belonging and the tolls, income, and revenue to be levied or derived therefrom, and conveying no other property; to have and to hold the said granted premises unto your orator and its successors forever, in trust, nevertheless, and for the uses and purposes in said indenture expressed, which will more fully and at large appear by reference to the original thereof, and your orator craves leave to produce and refer to the said original upon the hearing of this cause.

III. Your orator further shows that in and by said mortgage or deed of trust to your orator it was, among other thing, provided, and the said Toledo, Delphos and Burlington Railroad Company did therein covenant and agree, that if the interest due on any of said bonds should not be paid by the said last-mentioned railroad company when the same should become due, and should remain in arrears for six months after it had been actually demanded, at the place where the same was payable, as specified in said coupons, or in case the principal of said bonds or any of them should not be paid at their maturity, then it should be lawful for your
41 orator or its successor to forthwith demand, enter, take, and maintain possession of all and singular the railroad premises and franchises thereby conveyed, and as the attorney-in-fact or agent of said last-mentioned railroad company, by itself and agents or substitutes duly constituted, have, use, manage, operate, and enjoy the same and each and every part thereof to as full an extent as the said railroad company might do, and should make from time to time all needful repairs, alterations, and additions thereto and receive all the tolls, income, and revenue thereof, and after deducting the expense of such use, operation, reasonable repairs, alterations, and additions and the cost and charges of taking such possession and a fair compensation for the services of such trustee for such taking possession and management while in possession, your orator or its successor for the time being should apply the remaining income and revenue arizing from the use of said mortgaged property and coming to its hands to the payment of interest in default and maturing from time to time, satisfying the said coupons in the order of their several maturities, and thereafter apply the residue upon the principle of said then outstanding bonds.

And your orator further shows that it was also provided in said mortgage or deed of trust that if a six months' default should occur either in the payment of principal or interest of any of the bonds thereby secured, after such actual demand as aforesaid, then it should be lawful for your orator or said trustee for the time being,
42 with or without entry as aforesaid, to cause all and singular the said premises, railway, and appurtenances, equipment

and franchises thereby conveyed to be sold as an entirety at public auction to the highest and best bidder at the city of Dayton, Ohio, after giving at least sixty days' notice of the time and place and terms of sale by advertisement in a newspaper of general circulation in the city of Dayton and like advertisement in a newspaper of general circulation in the city of New York, and on such sale your orator or the trustee for the time being should make, execute, acknowledge, and deliver unto the purchaser or purchasers thereof a good and sufficient deed in fee simple conveying the said railroad, property, and franchises so sold, which conveyance should be a perpetual bar in law and equity against said last-mentioned railroad company, its successors and assigns and all persons claiming or to claim under them, of all right, title, interest, or claim of, in, or to the said premises and franchises or any part thereof, and that your orator, after deducting from the proceeds of sale the costs and expenses thereof and a reasonable compensation to said trustee and its attorneys and agents for services in connection therewith, should apply so much of the proceeds as might be necessary to the ratable payment of principle and then the accrued interest of all the said bonds, whether the said principle should then be due or not; and if any proceeds of such sale should remain in its hands after the full payment of the principle and accrued interest of all the said bonds, then it should render and pay over the same to said
43 last-mentioned railroad company or its successors or assigns.

And your orator further shows that it was provided in said mortgage or deed of trust and the said last-mentioned railroad company did therein and thereby expressly covenant and agree that it would, in case of default in the payment by it either of the principle or interest of any of its bonds thereby secured, forthwith, upon demand of your orator or of the trustee for the time being, surrender the full and peaceable possession of all and singular the premises thereby conveyed or intended to be, including all the real and personal property by it acquired subsequent to the date of the said mortgage for use in connection with the said line of railroad between said points, and would also surrender all books of account, records, and papers used by it in and about the operation thereof.

IV. Your orator further shows that the said last-mentioned railroad company, the Toledo, Delphos and Burlington Railroad Company, has failed to pay the interest on said bonds, and has made default therein to all the holders thereof, and said company has failed to pay the interest warrants or coupons due thereon October 1, 1882, April 1, 1883, and October 1, 1883, and the same has ever since remained unpaid, although payment of the same was duly demanded, and that said default has continued and said interest has remained in arrears for more than six months, and many of the holders of said bonds to whom such default has been made have required your orator to institute the necessary legal proceedings to foreclose said mortgage and sell the said mortgaged railway
44 and property of the Toledo, Delphos and Burlington Railroad Company (now commonly known as the Southeastern Division of the Toledo, Cincinnati and St. Louis Railroad Company), and for

the appointment of a receiver of said property, and to take such other and further steps necessary and proper for the protection of the rights of the holders of said bonds as your orator may be authorized to take by said deed of trust or mortgage; and your orator deems it for the interest of the parties concerned, particularly of the holders of the said first-mortgage bonds and coupons, to institute judicial proceedings for the foreclosure of said mortgage or deed of trust, and for the sale of all the premises and property thereby conveyed, and for the appointment of a receiver to take possession of, operate, and control the said railroad and its branches, and to take an inventory of all the personal or movable property included in said mortgage, and to keep an account of the earnings and of the expenses incurred in operating the said railway and branches.

V. Your orator further shows that the Toledo, Delphos and Burlington Railroad Company, proper corporate action for that purpose having first been had, did, on the said 16th day of May, 1881, execute and deliver to your orator, as trustee, a certain other indenture of trust and mortgage, bearing date on that day, whereby it granted, bargained, sold, and conveyed unto your orator, as trustee, all the railroad, property, rights, franchises, goods, and chattels described or mentioned in the mortgage first set forth in this bill, and the net income thereof, to secure the payment at maturity of the principle of two thousand seven hundred and fifty bonds of said To-
45 ledo, Delphos and Burlington Railroad Company, known as income bonds, 1,750 thereof for $1,000 each, numbered consecutively from 1 to 1750, both inclusive, and 1,000 thereof for $500 each, numbered from 1 to 1000 *each*, both inclusive, payable on the 1st day of April, 1921, and of such interest upon the said bonds as might become due thereon according to terms of said bonds and of said indenture; that it was by said last-mentioned indenture expressly agreed that interest upon said bonds was not to be due or payable except out of net earnings of said railroad company applicable to such purpose, and when the amount should have been ascertained and declared by the board of directors of said last-mentioned company whose duty it was by the terms of said indenture in each year during the currency of said bonds, beginning with the year 1882, in the month of January, to declare what amount, if any, of net earnings had been made during the preceding fiscal year which was justly applicable to the payment of interest on said income bonds, and such ascertainment of net earnings was to be made by deducting from gross income all operating expenses, including rebates, taxes, insurance, rents, interest on floating and funded debt and borrowed money, and the payments made on the principle thereof, liabilities for interest on the existing first-morgage bonds of the said railroad company, and other payments, as by reference to said income mortgage will more fully and at large appear.

That the said last-mentioned mortgage was duly recorded
46 in each of the counties in which the said first mortgage was recorded so as to constitute a second lien or mortgage upon the railroad and property thereby conveyed.

Your orator further shows, on information and belief, that two

thousand seven hundred and fifty of said bonds so secured as aforesaid by said second or income mortgage have been issued and disposed of by said Toledo, Delphos and Burlington Railroad Company and are now in the hands of divers persons as owners thereof, who are unknown to your orator.

Your orator further shows that no interest has become or is now due or payable on said last-mentioned bonds under the terms thereof and of said second mortgage, owing to insufficiency of earnings but that the principle of said bonds issued as aforesaid is a lien upon said property, rights, franchises, etc., of said Toledo, Delphos and Burlington Railroad Company described in said mortgage next after the first mortgage hereinbefore described.

VI. Your orator further shows that in or about the month of February, 1882, a certain corporation, known as the Toledo, Cincinnati and St. Louis Railroad Company (of Indiana & Illinois), claiming to be a corporation of the said States of Indiana and Illinois, by virtue of certain consolidations, and a certain other corporation, known as the Frankfort, St. Louis and Toledo Railroad Company, claiming to be a corporation of the State of Indiana, and the defendant, The Toledo, Delphos and Burlington Railroad Company, entered into an agreement with each other, whereby said several corporations undertook, under the name of the Toledo, Cincinnati
47 and St. Louis Railroad Company, to consolidate and unite all the lines of railroad of the Toledo, Delphos and Burlington Railroad Company (including said Southeastern Division) with the lines of railroad of the Toledo, Cincinnati and St. Louis Railroad Company of Indiana & Illinois and of the Frankfort, St. Louis and Toledo Railroad Company at their respective points of connection, and to consolidate the capital stock of the said respective companies under the laws of Ohio, Indiana, and Illinois, and to transfer and vest in said consolidated company, under the name of the Toledo, Cincinnati and St. Louis Railroad Company, all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies parties to said agreement of consolidation.

And your orator further shows that the said company formed by said last-mentioned consolidation and known as the Toledo, Cincinnati and St. Louis Railway Company had or claimed to have the power to and did construct or maintain and operate a railroad from the city of Toledo, in the State of Ohio, to the town of Delphos, in said State, and thence through the States of Indiana and Illinois into the city of East St. Louis, in Illinois, and from said town of Delphos to Dayton, Ohio, and also the railroad described in the mortgages hereinbefore set forth, and the railroad formerly of the Iron Railroad Company in Lawrence county, Ohio, and also a branch extending from a point near Shakertown, Ohio, to a point at or near Lebanon, Ohio, to wit, at Dodds, Warren county, Ohio, and a branch from Mercer to Shanesville, Ohio, and that on
48 or about the 5th day of May, 1883, the said Toledo, Cincinnati and St. Louis Railroad Company entered into a further agreement of consolidation with two corporations organized under

the laws of the State of Ohio, known, respectively, as the Cincinnati Northern Railway Company and the Spring Grove, Avondale and Cincinnati Railway Company, the first-named company owning or being engaged in constructing a railroad from Cincinnati, Ohio, to Waynesville, Warren county, Ohio, and the second-named company being the owner of a line of railroad from a point in Cincinnati to Spring Grove cemetery, Hamilton county, Ohio, which had theretofore been leased to said Cincinnati Northern Railway Company, whereby said three corporations undertook to consolidate and unite all their said lines of railroad and to consolidate the capital stock of the said respective companies under the laws of Ohio and to transfer to and vest in the said new consolidated company, under the name of the Toledo, Cincinnati and St. Louis Railroad Company (the defendant in this bill of complaint), all the powers, privileges, immunities, and property, real, personal, and mixed, belonging to the respective companies parties to said agreement of consolidation, said consolidated company expressly recognizing and affirming the said several mortgages hereinbefore mentioned and the said bonds and coupons secured thereby and assuming payment of the same, the capital stock of said new consolidated company to be thirty millions of dollars, of which eleven millions was to be preferred stock and the balance thereof to be common stock.

49 Your orator further shows that it is informed and believes that said several agreements of consolidation were acted upon by said companies from said respective dates, although your orator says that it was not a party to said consolidations or either of them, nor has it assented thereto or acquiesced therein.

VII. Your orator further shows that it is claimed by said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, that it owns, by virtue of said last-mentioned consolidation, all the aforesaid property, rights, franchises, and assets of the said Toledo, Delphos and Burlington Railroad Company mentioned and described in the two several mortgages aforesaid, and that the same have become subject to the debts and liabilities of said consolidated company; but your orator says that whatever rights, if any, in or to the same the said Toledo, Cincinnati and St. Louis Railroad Company acquired by virtue of said consolidation the same are subject and subordinate to the several mortgages hereinbefore stated, and that the railroad property, franchises, rights, and assets embraced in and covered by said mortgages are not nor were they at the time of the said last-mentioned consolidation sufficient to pay the amount of all the bonds and interest secured thereon by the several mortgages hereinbefore mentioned.

Your orator further shows that several of the constituent companies forming the said consolidated corporation known as the Toledo, Cincinnati and St. Louis Railroad Company heretofore executed various mortgages on the lines of railway and property owned

50 by them respectively to your orator, as trustee, which said mortgages in the aggregate cover, as your orator is informed and believes, substantially all of the property of said defendant, The Toledo, Cincinnati and St. Louis Railroad Company, and that de-

fault has been made in the payment of interest on all of the bonds secured thereby except income bonds, and that said mortgages are as follows:

1. First mortgage Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated January 17, 1880, to secure $1,250,000 of bonds and covering the main line of said railroad from Toledo to Kokomo, Indiana.

2. First mortgage (terminal trust) Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated June 21, 1880, to secure $250,000 of bonds and covering property in Toledo.

3. First mortgage Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated July 1, 1880, to secure $1,000,000 of bonds and covering Dayton Division from Delphos to Dayton.

4. First mortgage Toledo, Delphos and Burlington Railroad Company to Central Trust Company, trustee, dated May 16, 1881, to secure $250,000 of bonds and covering Cincinnati Division from Shakertown to Lebanon, Ohio.

5. First mortgage Toledo, Cincinnati and St. Louis Railroad Company to Central Trust Company and Thomas A. Hendricks, trustees, dated July 23, 1881, to secure $3,000,000 of bonds, covering line from Kokomo to East St. Louis.

51 6. First mortgage Iron Railroad Company to Central Trust Company, trustee, dated August 1, 1881, to secure $500,000 of bonds and covering lines in Lawrence county, Ohio.

7. First mortgage Cincinnati Northern Railway Company to Central Trust Company, trustee, dated October 1, 1880, to secure $1,000,000 of bonds and covering line from Waynesville to Cincinnati.

8. First mortgage Spring Grove, Avondale and Cincinnati Railway Company to Central Trust Company, trustee, dated May 25th, 1881, to secure $1,000,000 of bonds and covering line from Cincinnati to Spring Grove cemetery.

9. The mortgage particularly described in the second paragraph of this bill.

Your orator further shows that there are also other mortgages held by your orator as trustee and made by said several constituent railroad companies other than said Spring Grove, Avondale and Cincinnati Railway Company to secure income bonds which are junior to the several first mortgages hereinbefore recited and which are liens upon the aforesaid divisions, respectively, except that embraced in and covered by said terminal trust mortgage; that your orator has commenced or is about to commence in courts of competent jurisdiction proper legal proceedings or suits in equity to foreclose the said several mortgage liens and to procure the appointment of a receiver of each of said seperate lines covered by said respective mortgages, and that your orator is advised and believes that it will be for the interest of all the parties concerned, and especially of the several holders of the bonds and coupons

52 covered by said several and respective mortgages, that the

accounts and affairs of each of the said several lines or divisions should be kept seperate from each of the other divisions of said consolidated company, and that some one competent person should be appointed as receiver in each of the several suits or proceedings so as aforesaid commenced or to be commenced by your orator.

Your orator further says that, as it is informed and believes, the net earnings of some or one of the several divisions of the said Toledo, Cincinnati and St. Louis Railroad Company are sufficient, if kept seperate, to pay the interest warrants or coupons of the first-mortgage bonds constituting a lien upon such seperate division or divisions, but that the said Toledo, Cincinnati and St. Louis Railroad Company claims that the earnings of all of the divisions of the said road should go into the common fund of said consolidated company, but that no account should be kept of the seperate earnings and expense of each division, and the earnings and income of all of said divisions are now and ever since said consolidation have been received and taken by said consolidated company, the said Toledo, Cincinnati and St. Louis Railroad Company, which is hopelessly insolvent, and appropriated to pay the expenses of said consolidated company, and wholly diverted from the payment of the interest or any part thereof due upon the said bonds secured by the several mortgages hereinbefore described and referred to; and your orator further says that unless a seperate account of the earnings and expenses of each of said divisions be carefully kept and
53 preserved it will be impossible to ascertain whether any interest shall have become due — payable upon the income bonds hereinbefore mentioned or described.

Wherefore, and forasmuch as your orator is without remedy at law, your orator brings this its bill of complaint in behalf of all the holders of bonds and coupons secured by said mortgage first herein mentioned, and prays that Grenville D. Braman, who claims some interest, and the said Toledo, Delphos and Burlington Railroad Company may be made defendants hereto, and that said consolidated company, the Toledo, Cincinnati and St. Louis Railroad Company, may be made to answer as to its interest; that process of subpœna may issue against each of them, and that they be required to make answer respectively to all and singular the allegations and charges herein contained; that the said mortgaged property be seperately sold at a judicial sale, free of the claims of all parties hereto, upon such terms and conditions as this honorable court may deem most to the interest of the holders of said first-mortgage bonds and coupons, and that out of the proceeds of said sale the amount of bonds and interest secured by said first mortgage or deed of trust to your orator may be paid to your orator for the holders thereof respectively, and that the balance, if any, of said proceeds of sale may be paid to your orator as trustee for the holders of said bonds and coupons secured by said second mortgage of said Southeastern Division in order of priority, and that meanwhile and until such sale a receiver may be appointed of all and singular the
54 premises and property aforesaid embraced within the said mortgage or deed of trust hereinbefore first set forth, and that

he may be authorized and empowered to maintain and operate said railroad of said Southeastern Division, and to exercise all the powers usually granted to receivers, and to receive and to collect all the rents and other income from any of said mortgaged property, and to preserve the same and all parts of said mortgaged premises and property from waste and loss, and to make such payments and to carry out and perform such contracts and agreements as may be to the interest of said several parties interested in said railroad, and for such other and further relief as to the court shall seem to be just and according to equity and good conscience.

BUTLER, STILLMAN & HUBBARD,
HOADLY, JOHNSON & COLSTON,
Solicitors for Central Trust Company of New York.

THE UNITED STATES OF AMERICA.

SOUTHERN DISTRICT OF NEW YORK, }
State of New York, City and County of New York, } ss:

Henry F. Spaulding, being duly sworn, says that he is the president of The Central Trust Company of New York, the complainant in the above bill; that the said bill is true of his own knowledge except as to those matters which are therein stated to be upon information and belief, and as to those matters he believes it to be true.

H. F. SPAULDING.

55 Sworn to before me this 13th day of October, 1883.

EDWARD L. OWEN,
[SEAL.] *U. S. Commissioner for the Southern District of New York.*

CIRCUIT COURT OF THE UNITED STATES, }
Southern District of Ohio, W. D., } ss:

The above is an exact and true copy of the original on file in the clerk's office of the above-named court.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

Attest:

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

56 [Endorsed:] Exhibit No. 1 to bill of review. Case No. 4216. No. 3578. United States circuit court, southern district of Ohio, western division. In equity. The Central Trust — of New York, as trustee, etc., complainants, *vs.* The Toledo, Delphos & Burlington Railroad Company, The Toledo, Cincinnati & St. Louis Railroad Company, and others, defendants. Original bill of complaint for the foreclosure of mortgage on southeastern division. Filed Oct. 20th, 1883. W. C. Howard, clerk. Butler, Stillman & Hubbard, Hoadly, Johnson & Colston, counsel for complainants.

57 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio Western Division, }

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. George R. Sage, district judge—on Thursday, the twenty-fifth day of October, 1883, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK, as Trustee, &c., Complainant,
against
THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD Company and The Toledo, Cincinnati and St. Louis Railroad Company & Others, Defendants. } In Equity.

This cause coming on to be heard upon the bill of complaint of the said Central Trust Company of New York upon its motion for the appointment of a receiver of all and singular the railroad
58 and premises and assets, real and personal, of the said The Toledo, Delphos and Burlington Railroad Company in said bill of complaint described, and the said Toledo, Delphos and Burlington Railroad Company and the said Toledo, Cincinnati and St. Louis Railroad Company appearing and consenting thereto by Henry D. Hyde, Esq., the attorney of the said respective railroad companies, and the said Grenville D. Braman appearing and consenting thereto by his attorney, Hon. John A. McMahon, upon consideration whereof it is now ordered, adjudged, and decreed by the Honorable John Baxter, circuit judge, that William J. Craig be, and he hereby is, appointed receiver of all and singular the railroad and premises, property, money, and assets of the said The Toledo, Delphos and Burlington Railroad Company described in said bill of complaint, upon his giving bond, with security to be approved by the Hon. John Baxter, circuit judge, or by the Hon. George R. Sage, sitting in the circuit court in said district, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duties as such receiver and for obeying all the lawful orders of the court herein, and that as such receiver he is hereby ordered and directed to take possession of, maintain, and operate the said railroad, premises, and property described in said bill of complaint, being all and singular the line of railroad of the said Toledo, Delphos and Burlington Railroad Company as the same was constructed on the 16th day of May, 1881, or since then has been constructed between the crossing at Third street, in the city of Dayton, Ohio, being the western terminus of said division, and thence with the line of said road through the counties of Montgomery, Green, Fayette, Ross, Vinton, and Jackson, and thence on its branch line through the counties

of Jackson, Gallia, and Lawrence to a connection with the Ironton and Huntington railroad at or near the city of Ironton, in Lawrence county, Ohio, being about one hundred and eighty miles in
59 length, together with all and singular the right of way and road-bed then made or which since then has been made, and all its tracks then laid or which since then have been laid between the terminal points aforesaid, together with all the stations, depot grounds, rails, fences, bridges, sidings, engine-house, engines, cars, machine shops, buildings, erections in any way then or since then appertaining unto said described line of railroad between said points, together with all machinery, supplies, tools, and fixtures then or since then held, owned, or acquired by said Toledo, Delphos and Burlington Railroad Company for use in connection with its line of railroad aforesaid between said points, and all its depot grounds, yards, sidings, turnouts, sheds, machine shops, leasehold rights then or since then owned by said last-mentioned railroad company in connection with its said line of railroad between said points, together with all and singular the powers and franchises thereto belonging and the tolls, income, and revenue to be levied and derived therefrom, as fully described in said bill of complaint, reference to which, for greater certainty, is now had and made; and said receiver is hereby clothed with all the authority and rights usually given to receivers by courts of equity to take charge of, care for, and operate said railroad, premises, and property; to make reports of his acts and doings to this court at least every two months or oftener if required by the court; to collect and receive the tolls, incomes, issues, rents, and profits of said premises and property, and out of the same to make such repairs as may be necessary to preserve and keep the same in a safe and proper condition; and said receiver is hereby authorized to operate said railroad in connection with any other or others of the constituent roads of the said Toledo, Cincinnati and St. Louis Railroad Company of which he may be appointed receiver, but is hereby directed to keep the accounts of the earnings, incomes, issues, rents, and profits and expenditures of the said Toledo, Delphos and Burlington Railroad Company separate
60 from the earnings, issues, rents, profits, income, and expenditures of any of the other of the constituent roads of the said Toledo, Cincinnati and St. Louis Railroad Company, and the said defendants, The said Toledo, Delphos and Burlington Railroad Company and the said Toledo, Cincinnati and St. Louis Railroad Company, are hereby ordered and directed to deliver to the said William J. Craig, receiver, possession and control of all the property, rights, and franchises, assets and privileges of every kind above described; and it is further ordered that said receiver make and file in this court a true inventory of all the cars, engines, rolling stock, material, or supplies above described, as well as of all other personal property coming to his possession by virtue of this order; and said receiver is further ordered to keep the accounts of all through freight and passenger business over said constituent roads, so that the receipts therefrom may be duly apportioned between the same as the court may hereafter direct.

THE UNITED STATES OF AMERICA, }
Southern District of Ohio, Western Division, } ss:

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 11th day of September, A. D. 1889.

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*.

61 [Endorsed:] Exhibit No. 2. Bill of review. Case No. 4216. No. 3578. Circuit court of the United States, southern district of Ohio, western division. Central Trust Company of New York, &c., *vs.* Toledo, Delphos and Burlington Railroad Company *et al.* Certified copy of entry. Entered Oct. 25, '83. Journal V., — 172. —— ——, attorneys.

62 UNITED STATES OF AMERICA, }
Southern District of Ohio, } ss:

In the United States Circuit Court for the Southern District of Ohio.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation,
against
GEORGE D. BRAMAN and THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD COMPANY *et al.*
} In Equity.

The Intervening Petition of the American Loan and Trust Company and the Grant Locomotive Works.

To the honorable the judges of said court:

Respectfully show unto your honors the American Loan and Trust Company, a corporation established under the laws of the State of Massachusetts, and the Grant Locomotive Works, a corporation established under the laws of the State of New Jersey, that on the first day of August, 1882, your petitioner, the Grant Locomotive Works, entered into a certain agreement with the said Toledo, Cincinnati and St. Louis Railroad Company, a corporation of the States of Ohio, Indiana, and Illinois, for the lease of ten certain locomotives and tenders made by the said Grant Locomotive Works and numbered 57 to 66, both inclusive. A copy of the said agreement is hereto annexed and made part hereof.

Your petitioners further show that under said agreement the said Grant Locomotive Works duly delivered to said railroad company the ten locomotives described in said agreement on the terms
63 and conditions therein stated and not otherwise, and especially upon the condition of the payment by the said railroad com-

pany as lessee, at the office of the said American Loan and Trust Company, in the city of Boston, of the following sums as rent for said locomotives:

On the 1st day of August, 1883, twenty thousand dollars.
On the 1st day of August, 1884, twenty-seven thousand dollars.
On the 1st day of August, 1885, twenty-seven thousand dollars.
On the 1st day of August, 1886, thirty-one thousand dollars.

And also semi-annually, on the 1st days of February and August in each year, a sum equal to the half-yearly interest on the total amount of said rental remaining unpaid at the rate of six per cent. per annum, and also to pay all taxes that may at any time be levied on said locomotives and all premiums for insurance that may be paid by said Grant Locomotive Works as lessor under the provisions of said agreement.

Your petitioners further show that they have respectively kept and performed all the covenants and obligations in said agreement named on their part to be kept and performed, but said railroad company made default in the payment of the said twenty thousand dollars ($20,000), which became due and payable to your petitioners August 1st, 1883, and also defaulted in the semi-annual interest three thousand one hundred and fifty dollars ($3,150), which also became due and payable on the said 1st day of August last, and the said railroad company still neglects and refuses to make the said payments, although requested so to do.

64 Your petitioners further show that heretofore, on the 1st day of August, 1883, said railroad company being insolvent and unable to meet its current obligations, your honor duly appointed E. E. Dwight, Esqr., to be receiver thereof, and said Dwight duly accepted said trust, and afterwards, under the orders of this court, W. J. Craig, Esqr., succeeded to said trust as receiver herein—

All of which appears by the original proceedings in said cause in this honorable court, and said receiver entered into possession of said railroad, and has seized and now retains possession of said ten locomotives and tenders and refuses to surrender the same to your petitioners.

And your petitioners further show that under said agreement, by reason of said default, your petitioners are entitled to the immediate possession of said ten locomotives and tenders, and, further, that the principle of the said one hundred and five thousand dollars ($105,000) six per cent. equipment trust bonds, series "C," mentioned in said agreement, is now due and payable, and your petitioner, The Grant Locomotive Works, is the owner and holder of fifty-three thousand dollars ($53,000) of said bonds, and your petitioner, The American Loan and Trust Company, as trustee under said agreement, appears for all of said bonds.

And your petitioners further show that there is now due from the said receiver for rent of said locomotives from the said first day of August to the twentieth day of October, 1883, six thousand
65 dollars and interest three hundred and fifty dollars, and that the total sum now due from the said receiver for rentals and interest under said contract, including the twenty-three thousand

one hundred and fifty dollars due on the first day of August and interest thereon, three hundred and four & $\frac{6\,8}{1\,0\,0}$ dollars, is thirty thousand eight hundred and four & $\frac{6\,8}{1\,0\,0}$ dollars.

Your petitioners further show, upon information and belief, that the said locomotives and tenders have been depreciated in value by use upon said railroad 20,000.00 dollars, and that it will require fully that sum to put them in good marketable condition.

Wherefore your petitioners pray that the said receiver may be ordered to pay your petitioners the sum of $50,804.66 dollars in full of said rent, interest, and repairs, and that he may be ordered to forthwith surrender the said ten locomotives and tenders to your petitioners or their duly authorized agent, and, further, to pay your petitioners whatever amount may be found to be due after the sale of said locomotives and tenders, and the application of the proceeds to the payment of the one hundred and five thousand dollars, with interest, in accordance with the terms of said agreement.

And this amount, when the same shall be duly determined to the satisfaction of your honors, and the said sum of 50,804.66 dollars, now due for rent, interest, and repairs, your petitioners pray may be ordered and adjudged to be a charge upon all the property of 66 said defendant railway company and its constituent companies, or upon the proceeds of its sequestration, as ahead of the first-mortgage bonds secured by said property, and for such other and further relief as the nature of the premises may demand and to your honors may seem meet; and your petitioners shall ever pray.

WILSON AND JONES,
Solicitors for Grant Locomotive Works and The American Loan and Trust Company.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, } *ss:*

Bluford Wilson, being duly sworn, says that he is one of the solicitors for the petitioners in the above cause and is familiar with the matters and things stated in said petition, and that the same are true, except where stated on information and belief, and these he believes to be true.

BLUFORD WILSON.

Sworn to before me and subscribed in my presence the 27th day of October, A. D. 1883.

ROB'T GEORGI,
Dept. Cl'k U. S. C. C., S. D. O.

Circuit Court of the United States, Southern District of Ohio, W. D.

The above is a true and exact copy of the original on file in the clerk's office of above-named court.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

Attest:

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy.*

67 [Endorsed:] Exhibit No. 3 to bill of review. Case No. 4216. No. 3578. United States circuit court, southern district of Ohio, western division. The Central Trust Company *vs.* George D. Braman and The Toledo, Cincinnati and St. Louis R. R. Co. Intervening petition of the American Loan and Trust Co. and the Grant Locomotive Works. Filed Oct. 27th, 1883. Wm. C. Howard, cl'k. Wilson & Jones, attorneys — pet'n'rs.

68 Circuit Court of the United States, Southern District of Ohio, Western Division.

THE CENTRAL TRUST COMPANY OF NEW YORK, a Corporation, *against* THE TOLEDO, DELPHOS and BURLINGTON R. R. Co., The Toledo, Cincinnati and St. Louis Railroad Company, and Grenville D. Braman.	No. 3578.	In Chancery.

To the judges of the circuit court for the southern district of Ohio:

Your petitioner, The Central Trust Company, a corporation under the laws of New York, showeth unto your honors that it is the complainant in this cause, having filed herein, on the 20th day of October, 1883, its certain bill of complaint praying for the foreclosure of a certain first mortgage upon the said Toledo, Delphos and Burlington railroad, extending from Dayton, Ohio, to Ironton, Ohio, in the southern district of said State, in which mortgage your petitioner was the mortgagee, and in said bill of complaint further praying for the sale, by the order of the court, of the said railroad and its property included in said mortgage, in order to pay the bonds thereby secured, and for the appointment of a receiver, as will more fully appear by said bill of complaint, to which reference is hereby made for greater certainty in that behalf; and on the 20th day of October, 1883, by order of this court, one William J. Craig was duly appointed receiver of all the property of said rail-

69 road company specified in said bill of complaint, and he is now and ever since then has been in possession thereof as such receiver.

And your petitioner further showeth unto your honors that on the 27th day of October, 1883, the American Loan and Trust Company and the Grant Locomotive Works, by leave of this court, filed in this cause their certain intervening petition, setting forth that on the first day of August, 1883, the said Grant Locomotive Works had entered into an agreement with the Toledo, Cincinnati and St. Louis Railroad Company for the lease of ten locomotives and tenders of the manufacture of said locomotive works and numbered from 57 to 66, both inclusive, and annexed a copy of said agreement to said petition as part thereof, and that said locomotive works did deliver to said Toledo, Cincinnati and St. Louis Railroad Company, in pursuance of said alleged agreement, said ten locomotives and tenders,

the rent of same to be paid by said last-mentioned railroad company at the office of said American Loan and Trust Company, as follows: 1st of August, 1883, $20,000; 1st of August, 1884, $27,000; 1st of August, 1885, $27,000; 1st of August, 1886, $31,000, and to pay on the first days of February and August of each year a sum equal to the half-yearly interest on the total amount of said rental at rate of six per cent. per annum, and also to pay all taxes and insurance premium on said locomotives and tenders; and said petition further averred that said Toledo, Cincinnati and St. Louis Railroad Company failed to pay said rent falling due August 1st, 1883, to
70 wit, $20,000, and the said interest on the same, amounting to $3,150; and that, by order of this court, on the 1st day of August, 1883, one E. E. Dwight was appointed receiver of said last-mentioned railroad company, and that subsequently William J. Craig was appointed by this court receiver in the place of said Dwight; and said petition further set forth that by reason of said default said Grant Locomotive Works became entitled to take possession of said locomotives and tenders, and that the $105,000 of trust equipment bonds provided for in said agreement had become due, of which said locomotive works owned $53,000, and that said American Loan and Trust Company, as trustee under said agreement, appeared for the balance; and said petition alleged that there was due from "said receiver" $30,804.66 on account of rent and interest for said locomotives and tenders, and the further sum of $20,000 for alleged depreciation in value of said rolling stock by use thereof upon said railroad, making a total of $50,804.66, which said petition prayed the said receiver may be ordered to pay, and that he forthwith surrender to said petitioners the said locomotives and tenders and to pay said petitioners, with interest, such part of said sum of $105,000 as might remain due after the sale of said locomotives and tenders and the application of the proceeds thereof towards payment of said sum of $105,000, and that said balance, when the same should have been determined to the satisfaction of your honors, and the said sum of $50,804.66 be adjudged a charge upon all the property of said defendant railway company and its constituent companies ahead of the first-mortgage bonds thereon.

71 Your petitioner says no process was issued or order made requiring it to answer said petition, and that it would have denied all the allegations thereof had it been required to answer thereunto; and your petitioner further says that upon the allegations of said petition the said petitioners therein procured to be entered in this cause by the court, on the 22nd day of December, 1883, a certain order or decree purporting on its face to have been made after a hearing on evidence by the court of the questions involved, and purporting to find that "the receiver" had then in his possession Grant locomotives numbered 57 to 62, inclusive, and 64 to 66, inclusive, and that he was "using the same in the operation of the Southeastern Division of the said Toledo, Cincinnati and St. Louis Railroad Company's railroad between Dayton and —, Ohio," and that said engines were nine of those acquired by said Toledo, Cincinnati and St. Louis Railroad Company under said alleged agree-

ment hereinbefore referred to; and said order further purported to find that said receiver or his predecessor took possession of said locomotives and tenders on August 1st, 1883, and had used the same ever since without compensation, and that the price of said rolling stock as set forth in said agreement was reasonable, and that the same ought to — acquired as part of the permanent equipment of "said division" of said road; and said order further purported to adjudge and decree that "the receiver" pay said petitioners, as rent and interest of said rolling stock, $21,252.70, and the further sum of
72 $78,030, balance in full of said purchase-money for said rolling stock, as operating expenses of the said division, and that said amounts, with six per cent. interest, be a first lien on all the property of the Toledo, Cincinnati and St. Louis Railroad Company, and especially upon said Southeastern Division thereof, and that any balance thereof remaining unpaid at the time of sale of said railroad be first paid out of the proceeds thereof.

And your petitioner further showeth that on said 22nd day of December a certain other order was entered in this cause by procurement of said petitioners, upon the same petition, similar in all respects to said first-mentioned order, except that the locomotive was one locomotive only (No. 63), and purporting to find due therefor $2,361.30 for rent and interest and $8,670, balance of purchase-money, and making said sums a first lien on the property of said Cincinnati Northern Railway Company.

And your petitioner further showeth that both said orders were without the consent or knowledge of this petitioner, complainant in said cause, and were ordered to be entered by the court upon a misapprehension and by inadvertence, the court acting in that behalf upon belief that said orders had been assented to by the complainant in this cause, your petitioner; but, on the contrary thereof, your petitioner says it had no knowledge whatever that said orders were proposed to be entered and had no knowledge that the same had been entered until the 26th day of February last, when it first learned the fact from the announcement thereof by the counsel of the said
73 Grant Locomotive Works to the judges of the circuit court of the United States for the 6th and 7th circuits while sitting at the city of Indianapolis in conference relative to claims for rolling stock alleged to be in possession of the receiver operating the several constituent roads which formed said Toledo, Cincinnati and St. Louis Railroad Company, and thereupon your petitioner took immediate steps looking to the rescission of said orders and caused entries to be made by the order of this court on the 7th instant suspending the same until the further order of this court in that behalf.

And your petitioner further says that there are many errors and imperfections in said orders made as aforesaid upon the petition of said Grant Locomotive Works and American Loan and Trust Company, and that the same are and each of them is unjust, illegal, and oppressive. Your petitioner says that the same were not entered upon hearing first had by the court of the matters therein involved, but were entered without any hearing whatever; that the same were not heard upon evidence, but were entered without any competent

evidence whatever; that said orders state that the court was satisfied that the receiver had in his possession the engines therein mentioned, but does not state who the receiver was or of what he was receiver, the fact being, however, that said William J. Craig was not receiver on the first day of August, 1883, and never was receiver of the Toledo, Cincinnati, and St. Louis Railroad Company, and the said Dwight was never appointed receiver of any railroad by this court and was not the predecessor of said Craig as receiver;
74 all of which facts are within the knowledge of this court; and your petitioner says that said locomotives ought not to be acquired as part of the permanent equipment of the said Southeastern Division of said road or of the Cincinnati Northern railway, and the first-mortgage bondholders of said two roads do not desire to purchase the same and protest against the same being forced upon them by said intervening petitioners or made a lien upon the property of either of said roads to the prejudice of their rights. Your petitioners show that no interest has been paid on said 1st mortgage from the earnings of either of said roads, and as to said order hereinbefore secondly mentioned your petitioner showeth that the same refers exclusively to the property of the Cincinnati Northern Railway Company, which is not even a party to this case in which said order was made.

And as to each of said orders your petitioner further showeth that the findings therein purporting to be made are in many other important particulars untrue in fact, and especially in that the price of said locomotives and tenders and the rent thereof was reasonable; on the contrary, your petitioner showeth unto your honors that the same are unreasonable and excessive.

Your petitioner further showeth that it hath no knowledge of the alleged agreement of lease and sale described in the said intervening petition, and therefore denies the same; and your petitioner showeth that it hath no knowledge and therefore denies that the locomotives and tenders described in said intervening petition
75 or any locomotives and tenders were delivered to the said Toledo, Cincinnati, and St. Louis Railroad Company under said alleged agreement or otherwise.

Your petitioner further showeth that it hath no knowledge and therefore denies that said railroad company made default in the sums mentioned in said intervening petition or in any other sums, or that said sums or any other sums became or are now due or payable to the said intervening petitioners.

Your petitioner further showeth that it hath no knowledge and therefore denies that "said receiver" ever seized or now retains possession of said locomotives and tenders, or that he refuses to surrender the same to said intervening petitioners.

Your petitioner further showeth that it hath no knowledge whether the said intervening petitioners are in truth entitled to the possession of said ten locomotives and tenders, but your petitioner saith that if they are so entitled it makes no objection to their taking such possession.

Your petitioner says that it hath no knowledge and therefore de-

nies that the principle of said one hundred and five thousand dollars is now due and payable, or that said Grant Locomotive Works is the owner of said bonds.

Your petitioner further showeth that it hath no knowledge and therefore denies that there are due from the "said receiver" the sums mentioned in said intervening petition or any other sums whatsoever.

76 Your petitioner further showeth that it has no knowledge and therefore denies that the said locomotives and tenders have been depreciated in value by use in the sum mentioned in the said intervening petition or in any other sum.

Wherefore your petitioner prays that this petition may be taken as well for an answer to the said intervening petition of said Grant Locomotive Works and said American Loan and Trust Company as for a petition for rehearing or review of said intervening petition and of the said orders so erroneously and inadvertently as aforesaid made thereunder; and your petitioner further prays that the said orders be set aside, annulled, and held for naught; that the intervening petition may be hence dismissed; that the said Grant Locomotive Works and the said American Loan and Trust Company may be decreed to pay to your petitioner its reasonable costs and expenses in this behalf incurred, and that your petitioner may be decreed to have such other and further relief as shall be in conformity to the course of equity and to good conscience.

HOADLY, JOHNSON AND COLSTON,
Solicitors for Complainant, Hamilton County.

UNITED STATES OF AMERICA, *Southern District of Ohio,* } *ss:*

Edward Colston, being by me first duly sworn, says that he is one of the solicitors of The Central Trust Company of New York, the complainant in this cause, and that he has read the foregoing petition and is familiar with the contents thereof, and that the matters and things therein stated are true, except where stated on

77 information and belief, and those he believes to be true.

EDWARD COLSTON.

Sworn to before me and subscribed in my presence this 13th day of March, A. D. 1884.

[SEAL.]

JNO. T. JOCKEL,
Notary Public, Hamilton County, Ohio.

40c., paid by H., J. & Co.

Circuit Court of the United States, Southern District of Ohio, W. D.

The above is an exact copy of the original on file in the clerk's office of above-named court.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

Attest:

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Deputy*

78 [Endorsed:] Exhibit No. 4. Case 4216. No. 3578. United States circuit court, southern district of Ohio. The Central Trust Co. of New York, plaintiff, against The Toledo, Cincinnati and St. Louis R. W. Co., defendants. Petition of Central Trust Co. for rehearing, &c. Filed March 15th, 1884. W. C. Howard, clerk. Hoadly, Johnson & Colston, attorneys for —.

79 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, O., in said district, on the first Tuesday of April, being the first day of that month, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and eighth—present, the Hon. John Baxter, circuit judge, and the Hon. George R. Sage, district judge—on Thursday, the tenth day of April, 1884, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK, &c., Complainant,
vs.
THE TOLEDO, DELPHOS AND BURLINGTON RAILROAD COMPANY *et al.*, Defendants. } 3578. In Equity.

This day this cause came on further to be heard upon the intervening joint petition of the American Loan and Trust — and of the Grant Locomotive Works filed in this cause on the twenty-
80 seventh day of October, A. D. 1883, and the court, being fully advised in the premises, does order, adjudge, and decree as follows, viz;

The court finds that the two decrees herein made and entered upon said petition on the twenty-second day of December, A. D. 1883, were entered without notice to the complainant herein and without proof; that the said decrees are erroneous and unjust to the bondholders for whom the said complainant is trustee and *and* are unauthorized by the pleadings and are based upon a misrecital of the facts as evidenced by the record in this cause; that said decrees were authorized by the court without examination in the erroneous belief entertained at the time that all the parties in interest had assented to said decrees, and that the parties adversely interested acquired no knowledge of the allowance of said decrees until about the twenty-fourth day of February, A. D. 1884, and after the adjournment of the term of court at which the same were entered.

And thereupon it is by the court of its own motion adjudged, ordered, and decreed that the said decrees be, and they are hereby, annulled, set aside, and held for naught.

And the court, coming now to determine the questions arrising upon the said intervening petition of the American Loan and Trust

Company and the Grant Locomotive Works, does order, adjudge, and decree as follows, viz:

That the relief prayed for in the said intervening petition be, and its is hereby, denied except as hereinafter provided.

81 And the court does further find that the said petitioners are entitled to fair compensation for the use of said rolling stock described in their said petition by the receiver in this cause upon the railroad of the defendant, The Toledo, Delphos and Burlington Railroad Company, commonly known as the Southeastern Division of the Toledo, Cincinnati and Saint Louis railroad, and for any deterioration by reason of such use; but the court defers the determination of the amount of such compensation until the coming in of the report thereon of the master appointed in this cause on the fifth day of April, A. D. 1884.

And the court does further find that the said petitioners are entitled to take and repossess themselves of their said rolling stock wherever the same may be found in the possession of the receiver appointed in this cause or of the receiver appointed in causes numbered 3554, 3576, 3577, 3579 in this court.

And leave is hereby granted to said petitioners to apply at any time to this court for any additional orders that may be necessary in that behalf; and the said American Loan and Trust Company and Grant Locomotive Works applied for leave to answer the petition of the complainant, The Central Trust Company, filed March 15th, 1884, and to support their answer by affidavits or other proof, and the court, entertaining the opinion that the answer and affidavits proposed are by force of the foregoing decree rendered

82 unnecessary, declined to grant the leave asked and refused to permit an answer to said petition for rehearing on affidavits or other proof in support thereof to be filed; and thereupon the intervening petitioners, The American Loan and Trust Company and Grant Locomotive Works, in open court prayed for an appeal from the foregoing decree, which is thereupon disallowed by the court.

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

I, Benjamin R. Cowen, clerk of the circuit court of the United States within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 31st day of August, A. D. 1889.

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Deputy*.

83 [Endorsed:] Exhibit No. 5. Bill of review. Case 4216. No. 3578. Circuit court of the United States, southern district of Ohio, western division. The Central Trust Co. of New York

vs. The Toledo, Delphos and Burlington R. R. Co. *et al.* Certified copy of entry. W. C. Howard, clerk. Entered April 10, '84, Journal V, 363. —— ——, attorneys.

84 UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } *ss:*

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in the said district, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth—present, the Hon. Howell E. Jackson, circuit judge—on Monday, the 28 day of January, 1889, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK, Complainant, *vs.* THE TOLEDO, CINCINNATI AND ST. LOUIS Railroad Company (Dayton and Southeastern Division) *et al.*, Respondents. } No. 3578. In Chancery.

85 In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Company.

This cause coming on to be further heard on the motion of said intervening petitioners, by their counsel, B. H. Bristow and Bluford Wilson, to require the purchasers of the railroad property heretofore sold under decree of foreclosure and sale in this case to forthwith pay into the registry of this court, for the use of the said intervenors, the amount due under the decree entered herein December 22, 1883, with interest, according to the terms thereof, and that in default thereof the said railroad property be resold for the benefit of the intervenors;

And the said intervenors being present by their counsel, and the purchasers of the Dayton and of the Cincinnati Divisions being present by C. W. Fairbanks, their solicitor, and the Dayton, Fort Wayne & Chicago Railroad Company, assignee of the purchasers of the Southeastern Division and of the purchasers of the Iron railroad, by John C. Coombs, its solicitor, and R. D. Marshall, the present receiver of the said railroad company, and the purchasers of the main line, the Toledo Terminal, and the St. Louis Division being present, Clarence Brown, their solicitor, objecting to the jurisdiction of the court, and the complainant, The Central Trust Company of New York, opposing said motion of the said intervenors, being represented by Edward Colston, its solicitor;

And thereupon, pending the hearing upon the said motion, comes

the complainant, The Central Trust Company of New York, and asks the court that the petition filed herein in its behalf on the 15th day of March, 1884, be now heard as a petition for a rehearing of the said decrees of December 22nd, 1883, or if that relief be denied that the same be taken and held to be a bill of review or a bill in the nature of a bill of review, or if that relief be denied that the said petition be amended and supplemented in certain respects, as stated in a certain paper now read, and be now docketed as
86 an original bill of review as of the 15th day of March, 1884; and, after hearing Edward Colston, the counsel for said complainant, in support of the said motion and B. H. Bristow and Bluford Wilson, of counsel for the said intervening petitioners, in opposition thereto, it is ordered that the said application of the complainant, and each part thereof, be, and the same is, denied in all respects.

To which ruling and order of the court the said complainant duly excepts.

87 And thereupon and still pending the hearing upon the motion first before stated comes the Dayton, Fort Wayne and Chicago Railroad Company, by John C. Coombs, its counsel, and R. D. Marshall, its present receiver, the said railroad company claiming to be the assignee of the purchasers of the Southeastern Division, which railroad was sold under the decree of foreclosure and sale herein, and prays leave to be permitted to intervene herein and be heard herein in review upon the matters of the original orders or decrees entered herein on December 22nd, 1883, and as set forth in a petition in writing therefor which it moved the court for leave to file herein; and, after hearing the counsel for said Dayton, Fort Wayne and Chicago Railroad Company in support of said motion and B. H. Bristow and Bluford Wilson, of counsel for the said intervening petitioners, in opposition thereto, it is ordered that the application of the said Dayton, Fort Wayne and Chicago Railroad Company for leave to intervene and to file said petition herein be, and the same is, in all respects denied.

To which ruling and order of the court the said Dayton, Fort Wayne and Chicago Railroad Company and its receiver duly except.

88 And thereupon, the court having fully heard the argument of counsel of the respective parties hereto upon the said motion of the said intervening petitioners, The Grant Locomotive Works and The American Loan and Trust Company, as first above stated, and having fully deliberated thereon, and the court considering that the order entered herein on the 10th day of April, 1884, was void, and that it had been for that reason set aside and ordered to be held for naught by the order entered herein on June 11th, 1887, and that all the orders or decrees entered herein in pursuance of or in execution of the said order of April 10th, 1884, were equally void and of no effect so far as the same purport to affect the rights of the said intervenors, and that the decrees entered herein on December 22, 1883, are now in full force and effect as to the locomotives hereinafter mentioned;

And the court further considering that under the said decrees of Dec. 22, 1883, and under said decree of foreclosure and sale herein and the notice of sale given in pursuance of such decree, and under the sale actually made thereunder and the order of this court confirming the said sale, the purchasers of the mortgage division of said Toledo, Cincinnati & St. Louis R. R. sold in this case took the said railway and property subject to the payment of the sum of $99,282.70, with interest thereon from the first day of December, 1883, adjudged by the said decree of December 22, 1883, in respect thereto, to be due to the intervenor, The Grant Locomotive Works, on account of locomotives Nos. 57 to 62 and 64 to 66, inclusive, and by the said decrees ordered to be paid by W. J. Craig, the receiver, in the manner set forth in said decree of Dec. 22nd, 1883, to the said intervenor, and also adjudged by the said decree to be a first lien upon the Toledo, Cincinnati and St. Louis railroad, and especially upon the Southeastern Division thereof;

And the court further considering that the said lien adjudged by the said decree of Dec. 22nd, 1883, in favor of the said inter-
89 venor, The Grant Locomotive Works, against the said railroad should now be enforced, and also that there should now be enforced the right reserved by this court upon the sale of the Southeastern Division of the said Toledo, Cincinnati & St. Louis railroad to resell the premises and property so sold in this case upon failure to comply within twenty days with any order of this court directing the purchasers thereof to make such further payment in this case as this court should from time to time direct in order to meet claims adjudged in this case by this court to be prior in equity to the mortgages foreclosed in this case;

And the said intervenor admitting it had already received upon account for the said locomotives Nos. 57 to 62 and 64 to 66, inclusive, but without prejudice to its rights in the premises, the following sums of money, viz., the sum of twenty-six thousand seven hundred and sixty-two dollars and twenty-eight cents, paid between August, 1884, and April, 1887, upon account of rentals of said locomotives, and the amount of thirty-six hundred dollars, paid June 3, 1887, upon the sale of locomotives Nos. 60 and 61 to Post, Martin & Co., and that after crediting the amounts so admitted to have been paid, and after adjusting the interest and expense accounts up to the 12th day of November, 1888, said expense being $516.01, amount paid by said intervenor for care and repairs of said locomotives from September 30, 1884, to September 21, 1888, the net amount remaining due and unpaid to the said intervenor on account of the said locomotives Nos. 56 to 62 and 64 to 66, inclusive, on this 12th day of November, 1888, is the sum of ninety-four thousand and twenty-six dollars and forty-eight cents, and no more, and no one claiming that any other or greater credit should be made upon the said claim:

90 Thereupon the court orders as follows:

It is now ordered that the purchasers of the Southeastern Division of the said Toledo, Cincinnati & St. Louis railroad, as being primarily chargeable therewith as between themselves and the said

intervenor under the said decree of Dec. 22nd, 1883, be and they are required to pay or cause to be paid into the registry of this court within sixty days from the 28 day of January, 1889, for the use of the said intervenor, The Grant Locomotive Works, the amount of ninety-four thousand and twenty-six $\frac{48}{100}$ dollars ($94,026.48), with interest thereon from the 12th day of November, 1888.

And it is further ordered that in default of making of the said payment within the time so limited therefor the said Southeastern Division be resold upon request of the said intervenor herein, The Grant Locomotive Works, for the payment and satisfaction out of the proceeds thereof of the said sum of $94,026.48, with interest, herein directed to be paid to the said intervenor by the said purchasers.

And it is further ordered that this decree is without prejudice to any right the said intervenors may have to apply for orders to resell other mortgage divisions of the Toledo, Cincinnati and St. Louis railroad for the payment out of proceeds of such resale any balance of the amount hereinbefore named, to wit, said sum of $94,02.48, not realized upon any sale of the Southeastern Division.

And it is further ordered that in case any resale of the railroad and property hereinbefore described in this case becomes necessary by reason of default in the payment of said amount hereby ordered to be paid, then such resale shall be made pursuant to the terms of the original decrees for the foreclosure and sale of the said railroads respectively, but by the marshal of this district, who is hereby appointed master commissioner for that purpose, and that leave
91 is given to apply to this court for further directions as to any such sale.

And it is further ordered that this order is and shall be without prejudice to the right of the said Southeastern Division and the purchasers thereof or any other persons or corporation succeeding to or having their rights in the premises to apply to this and other courts having jurisdiction in the several cases in foreclosure proceedings against the several divisions of the said Toledo, Cincinnati & St. Louis railroad for contribution towards the said amount from said several divisions or the said purchases thereof, or in the event of the payment of the same by said purchasers of said Southeastern Division to apply for a distribution thereof over and among said other divisions according to the percentage of contribution and distribution applicable thereto as herein and in said other causes of foreclosure has been or may be determined, or to collect or enforce the payment of said sum by the said Toledo, Cincinnati & St. Louis Railroad Company or out of and against any property thereof, all as the rights not now passed upon but expressly reserved as to such contribution of the said parties purchasers of said respective mortgage divisions and said Toledo, Cincinnati and St. Louis Railroad Company as between each other shall appear and as this court and any other court having jurisdiction in or touching the premises heretofore may have determined or shall order, adjudge, and decree.

And thereupon the said Central Trust Company of New York prays an appeal to the Supreme Court of the United States from

the orders and decrees so made, and the said Central Trust Company also prays an appeal to the Supreme Court of the United States from the said rulings hereinbefore mentioned, to which it excepted
92 as aforesaid, which exceptions are allowed, and this court allows both of the appeals so prayed upon the said appellants filing a bond herein, with sufficient security, to be approved by this court, in the sum of ten thousand dollars, which appeal shall during the pendency and until the determination thereof supersede this decree and all enforcements thereof by or on behalf of the said intervenor.

And in like manner, from the rulings hereinbefore set forth, to which the Dayton, Fort Wayne and Chicago Railroad Company excepted as aforesaid, which exceptions are also allowed, the Dayton, Fort Wayne and Chicago Railroad Company also prays a like appeal from the orders and decrees so made, except from so much thereof as provides that the same is without prejudice to any contribution which may be found to be just and proper as to any payments made by or under any resale made under this order, — allows the same, the said appellants filing herein a bond for costs in the sum of five hundred dollars, with sufficient security, to be approved by this court.

THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Div., }

I, B. R. Cowen, clerk U. S. circuit court within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, O., this 11th day of September, A. D. 1889.

B. R. COWEN, *Clerk*,
By R. C. GEORGI, *Dep.*

93 [Endorsed:] Exhibit No. 6. Bill of review. Case 4216. Copy. No. 3578. U. S. circuit court, southern district of Ohio, western division. Central Trust Co. of New York *vs.* Toledo, Cincinnati & St. Louis R. R. Co. *et al.* Order for resale of Southeastern Division upon decree in favor of the intervenors, Grant Loco. Works. Entered Jan'y 28, '89, Journal Y, 187.

94 UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and had in the court-rooms, at the city of Cincinnati, Ohio, in the said district, on the first Tuesday of October, being the second day of that month, in the year of our Lord one thousand eight hun-

dred and eighty-eight, and of the Independence of the United States of America the one hundred and thirteenth—present, the Hon. Howell E. Jackson, circuit judge—on Monday, the 28 day of January, 1889, among the proceedings had were the following, to wit:

THE CENTRAL TRUST COMPANY OF NEW YORK, Complainant,
vs.
THE TOLEDO, CINCINNATI AND ST. LOUIS RAILROAD Company, The Cincinnati Northern Railway Company, *et al.*, Respondents.
} In Chancery. No. 3578.

95 In the matter of the intervening petition of the Grant Locomotive Works and the American Loan and Trust Comp'y.

This cause coming on to be further heard on the motion of said intervening petitioners, by their counsel, B. H. Bristow and Bluford Wilson, to require the purchasers of the railroad property heretofore sold under decree of foreclosure and sale in this case to forthwith pay into the registry of this court for the use of the said intervenors the amount due under the decree entered herein December 22, 1883, with interest, according to the terms thereof, and that in default thereof the said railroad property be resold for the benefit of the intervenors;

And the said intervenors being present by their counsel, and the purchasers of the Dayton and of the Cincinnati Divisions being present by C. W. Fairbanks, their solicitor, and the Dayton, Fort Wayne & Chicago Railroad Company, assignee of the purchasers of the Southeastern Division and of the purchasers of the Iron railroad, by John C. Coombs, its solicitor, and R. D. Marshall, the present receiver of the said railroad company, and the purchasers of the main line, the Toledo Terminal, and the St. Louis Division being present by Clarence Brown, their solicitor, objecting to the jurisdiction of the court, and the complainant, The Central Trust Company of New York, opposing said motion of the said intervenors, being represented by Edward Colston, its solicitor;

And thereupon, pending the hearing upon the said motion, comes the complainant, The Central Trust Company of New York, and asks the court that the petition filed herein in its behalf on the 15th day of March, 1884, be now heard as a petition for a rehearing of the said decrees of December 22nd, 1883, or, if that relief be denied, that the same be taken and held to be a bill of review or a bill in the nature of a bill of review, or, if that relief be denied, that the said petition be amended and supplemented in certain respects, as stated in a certain paper now read, and be now docketed as
96 an original bill of review as of the 15th day of March, 1884; and, after hearing Edward Colston, the counsel for said complainant, in support of the said motion, and B. H. Bristow and Bluford Wilson, of counsel for the said intervening petitioners, in opposition thereto, it is ordered that the said application of the complainant and each part thereof be, and the same is, denied in all respects.

To which ruling and order of the court the said complainant duly excepts.

97 And thereupon and still pending the hearing upon the motion first before stated comes the Dayton, Fort Wayne and Chicago Railroad Company, by John C. Coombs, its counsel, and R. D. Marshall, its present receiver, the said railroad company claiming to be the assignee of the purchasers of the Southeastern Division, which railroad was sold under the decree of foreclosure and sale herein, and prays leave to be permitted to intervene herein and be heard herein in review upon the matters of the original orders or decrees entered herein on December 22nd, 1883, and as set forth in a petition in writing therefor which it moved the court for leave to file herein; and, after hearing the counsel for said Dayton, Fort Wayne and Chicago Railroad Company in support of said motion and B. H. Bristow and Bluford Wilson, of counsel for the said intervening petitioners, in opposition thereto, it is ordered that the application of the said Dayton, Fort Wayne and Chicago Railroad Company for leave to intervene and to file said petition herein be, and the same is, in all respects denied.

To which ruling and order of the court the said Dayton, Fort Wayne and Chicago Railroad Company and its receiver duly except.

98 And thereupon, the court having fully heard the argument of counsel of the respective parties hereto upon the said motion of the said intervening petitioners, The Grant Locomotive Works and The American Loan & Trust Company, as first above stated, and having fully deliberated thereon, and the court considering that the order entered herein on the 10th day of April, 1884, was void, and that it had been for that reason set aside and ordered to be held for naught by the order entered herein on June 11th, 1887, and that all the orders or decrees entered herein in pursuance of or in execution of the said order of April 10th, 1884, were equally void and of no effect so far as the same purport to affect the rights of the said intervenor, and that the decrees entered herein on December 22, 1883, are now in full force and effect as to the locomotive hereinafter mentioned;

And the court further considering that under the said decrees of Dec. 22, 1883, and under said decree of foreclosure and sale herein and the notice of sale given in pursuance of such decree, and under the sale actually made thereunder and the order of this court confirming the said sale, the purchasers of the mortgage division of said Toledo, Cincinnati & St. Louis R. R. sold in this case took the said railway and property subject to the payment of the sum of $11,031.30, with interest thereon from the first day of December, 1883, adjudged by the said decree of December 22, 1883, in respect thereto to be due to the intervenor, The Grant Locomotive Works, on account of locomotive No. sixty-three (63), and by the said decree ordered to be paid by W. J. Craig, the receiver, in the manner set forth in said decree of Dec. 22nd, 1883, to the said intervenor, and also adjudged by the said decree to be a first lien upon the Cincin-

nati Northern Division of the Toledo, Cincinnati & St. Louis railroad;

And the court further considering that the said lien adjudged by the said decree of Dec. 22nd, 1883, in favor of the said intervenor, The Grant Locomotive Works, against the said railroad should now be enforced, and also that there should now be enforced the right reserved by this court upon the sale of the Cincinnati Northern Division of the said Toledo, Cincinnati & St. Louis railroad to resell the premises and property so sold in this case upon failure to comply within twenty days with any order of this court directing the purchasers thereof to make such further payment in this case as this court should from time to time direct in order to meet claims adjudged in this case by this court to be prior in equity to the mortgages foreclosed in this case;

99

And the said intervenor admitting it had already received upon account for the said locomotive No. sixty-three (63), but without prejudice to its rights in the premises, the following sums of money, viz., the sum of $3,420.64, paid between August, 1884, and March, 1887, upon account of rentals, and the sum of $1,850, paid September 30th, 1887, upon the sale of locomotive No. 63 to the Oregon Improvement Company, and that after crediting the amounts so admitted to have been paid, and after adjusting the interest and expense accounts up to the 12th day of November, 1888, the net amount remaining due and unpaid to the said intervenor on account of the said locomotive No. sixty-three (63) on this 12th day of November, 1888, is the sum of eight thousand four hundred and eighteen and $\frac{67}{100}$ dollars ($8,418.67), and no more, and no one claiming that any other or greater credit should be made upon the said claim:

100

Thereupon the court orders as follows:

It is now ordered that the purchasers of the Cincinnati Northern Division of the said Toledo, Cincinnati & St. Louis railroad, as being primarily chargeable therewith as between themselves and the said intervenor under the said decree of Dec. 22nd, 1883, be and they are required to pay or cause to be paid into the registry of this court within sixty days from the 28 day of January, 1889, for the use of the said intervenor, The Grant Locomotive Works, the amount of $8,418.67, with interest thereon from the 12th day of November, 1888.

And it is further ordered that in default of making of the said payment within the time so limited therefor the said Cincinnati Northern Division be resold upon request of the said intervenor herein, The Grant Locomotive Works, for the payment and satisfaction out of the proceeds thereof of the said sum of $8,418.67, with interest, herein directed to be paid to the said intervenor by the said purchasers.

And it is further ordered that this decree is without prejudice to any right the said intervenor may have to apply for orders to resell other mortgage divisions of the Toledo, Cincinnati and St. Louis railroad for the payment out of proceeds of such resale any balance

of the amount hereinbefore named, to wit, said sum of $8,418.67, not realized upon any sale of the Cincinnati Northern Division.

And it is further ordered that in case any resale of the railroad and property hereinbefore described in this case becomes necessary by reason of default in the payment of said amount hereby ordered to be paid, then such resale shall be made pursuant to the terms of the original decrees for the foreclosure and sale of the said railroads respectively, but by the marshal of this district, who is hereby appointed master commissioner for that purpose, and that leave
101 is given to apply to this court for further directions as to any such sale.

And it is further ordered that this order is and shall be without prejudice to the right of the said Cincinnati Northern Division and the purchasers thereof or any other persons or corporation to apply to this and other courts having jurisdiction in the several cases in foreclosure proceedings against the several divisions of the said Toledo, Cincinnati & St. Louis railroad for contribution towards the said amount from said several divisions or the said purchases thereof, or in the event of the payment of the same by said purchasers of said Cincinnati Northern Division to apply for a distribution thereof over and among said other divisions according to the percentage of contribution and distribution applicable thereto as herein and in said other causes of foreclosure has been or may be determined, or to collect or enforce the payment of said sum by the said Toledo, Cincinnati & St. Louis Railroad Company or out of and against any property thereof, all as the rights not now passed upon but expressly reserved as to such contribution of the said parties purchasers of said respective mortgage divisions and said Toledo, Cincinnati and St. Louis Railroad Company as between each other shall appear and as this court and any other court having jurisdiction in or touching the premises heretofore may have determined or shall order, adjudge, and decree.

And thereupon the said Central Trust Company of New York prays an appeal to the Supreme Court of the United States from the orders and decrees so made, and the said Central Trust Company also prays an appeal to the Supreme Court of the United States from the said rulings hereinbefore mentioned, to which it excepted
102 as aforesaid, which exceptions are allowed, and this court allows both of the appeals so prayed upon the said appellants filing a bond herein, with sufficient security, to be approved by this court, in the sum of five thousand dollars, which appeal shall, during the pendency and until the determination thereof, supersede this decree and all enforcements thereof by or on behalf of the said intervenor.

And in like manner, from the rulings hereinbefore set forth, to which the Dayton, Fort Wayne and Chicago Railroad Company excepted as aforesaid, which exceptions are also allowed, the Dayton, Fort Wayne and Chicago Railroad Company also prays a like appeal from the orders and decrees so made, except from so much thereof as provides that the same is without prejudice to any contribution which may be found to be just and proper as to any pay-

ment made by any of the purchasers under the provisions of the said order or realized under any resale made under this order, and this court allows the same, the said appellants filing herein a bond for costs in the sum of five hundred dollars, with sufficient security, to be approved by this court.

THE UNITED STATES OF AMERICA, *Southern Dist. of Ohio, Western Division,* } *ss:*

I, Benjamin R. Cowen, clerk U. S. circuit court within and for the division and district aforesaid, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Seal of the Circuit Court, South'n Dist. of Ohio.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, O., this 11th day of September, A. D. 1889.

B. R. COWEN, *Clerk,*
By R. C. GEORGI, *Dep.*

103 [Endorsed:] Exhibit No. 6 A. Bill of review. Case 4216. Copy. No. 3578. U. S. circuit court, southern district of Ohio, western division. Central Trust Co. of New York *vs.* Toledo, Cincinnati & St. Louis R. R. Co. *et al.* Order for resale of Cin. Northern Division upon decree in favor of the intervenor, Grant Loco. Works. Entered Jan'y 28, '89, Journal Y, 192.

Endorsed on cover: S. Ohio C. C. U. S. No. 1281. The Central Trust Company of New York, appellant, *vs.* The Grant Locomotive Works and The American Loan & Trust Company. Filed October 2, 1889.